IN THE

Supreme Court of the United States

October Term, 1947

No. 87

ORSEL McGHEE and MINNIE S. McGHEE, his wife,
Petitioners,

v.

BENJAMIN J. SIPES, and ANNA C. SIPES, JAMES A. COON and ADDIE A. COON, *ET AL.*,
Respondents.

BRIEF FOR PETITIONERS

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TABLE OF CONTENTS

Table of Cases

Statutes Cited

Treaties

Authorities Cited

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Opinion Below

The opinion of the Supreme Court of the State of Michigan appears in the Record (R. 60-69) and is reported at 316 Mich. 614.

Jurisdiction

The jurisdiction of this Court is invoked under section 237b of the Judicial Code (28 U. S. C. 344b).

The date of judgment of the Supreme Court of the State of Michigan is January 7, 1947 (R. 70), and petitioners' motion for a rehearing was denied on March 3, 1947 (R. 80). A Petition for Certiorari was duly presented to this Court on May 10, 1947 and was granted by this Court on June 23, 1947 (R. 81).

Summary Statement of Matter Involved

1. Statement of the Case

In the Circuit Court of Wayne County, Michigan, in Chancery, the respondents herein sought and obtained a decree requiring the petitioners to move from property which they owned and which they were occupying as their home, and thereafter restraining them from using or occupying the premises, and further restraining petitioners from violating a race restrictive covenant upon such land, set forth more fully below (R. 52-53).

In their amended answer to the bill of complaint petitioners duly raised the defense that the enforcement by the court of such restrictive covenant would contravene the Fourteenth Amendment of the United States Constitution and that the restrictive covenant relied upon by the respondents was void as against public policy (R. 16-17). On appeal to the Supreme Court of the State of Michigan the petitioners' Reasons and Grounds of Appeal specifically assigned as errors of the lower court the holding that the enforcement of such restrictive covenant by a court of equity was not violative of the Fourteenth Amendment of the Constitution of the United States and that the race restrictive covenant was not void as against public policy (R. 5-6).

The Supreme Court of Michigan affirmed the decree entered by the trial court and in its opinion considered and adjudicated, in favor of the respondents, the issues raised (R. 60-69).

2. Statement of Facts

Petitioners are citizens of the United States and are Negroes (R. 48, 53). They own and occupy as a residence

Lot 52 in Seebaldt's Subdivision of the City of Detroit, Michigan, commonly known as 4626 Seebaldt Avenue (R. 7). Respondents are the owners of lots in the same subdivision and an adjoining subdivision (R. 7). At various times during the year 1934 the predecessors in title of the petitioners and respondents had executed and recorded an instrument relating to their respective lots in such subdivisions, providing in its essential parts as follows:

> "We, the undersigned, owners of the following described property:
>
> Lot No. 52 Seebaldt's Sub. of Part of Joseph Tireman's Est. ¼ Sec. 51 & 52 10 000 A T and Fr'l Sec. 3, T. 2S, R 11 E.
>
> for the purpose of defining, recording, and carrying out the general plan of developing the subdivision which has been uniformly recognized and followed, do hereby agree that the following restriction be imposed on our property above described, to remain in force until January 1, 1960—to run with the land, and to be binding on our heirs, executors, and assigns:
>
> "This property shall not be used or occupied by any person or persons except those of the Caucasian race.
>
> "It is further agreed that this restriction shall not be effective unless at least eighty percent of the property fronting on both sides of the street in the block where our land is located is subjected to this or a similar restriction" (R. 42).

Such restriction was sought to be imposed upon 53 lots in the two subdivisions in which respondents reside (R. 34). Petitioners purchased their property from persons who did not sign the restrictive agreement (R. 13).

Question Presented

Does the enforcement by state courts of an agreement restricting the disposition of land by prohibiting its use and occupancy by members of unpopular minority groups, where neither the willing seller nor the willing purchaser was a party to the agreement imposing the restriction, violate the Fourteenth Amendment and treaty obligations under the United Nations Charter?

Errors Relied Upon

The Supreme Court of Michigan erred in holding:

1. That the due process clause of the 14th Amendment afforded petitioners no rights other than notice, a day in court and reasonable opportunity to appear and defend, and was not violated by the issuance of the injunction enforcing the race restrictive agreement (R. 65-66).

2. That court enforcement of the restriction in question does not violate the equal protection clause of the 14th Amendment, because "we have never applied the constitutional prohibition to private relations and private contracts" and that on the contrary to refuse to enforce the agreement would deny equal protection to the plaintiffs below (R. 66).

3. That the human rights provisions of United Nations Charter are "merely indicative of a desirable social trend and an objective devoutly to be desired by all well-thinking peoples." It is not "a principle of law that a treaty between sovereign nations is applicable to the contractual rights between citizens of the United States when a determination of these rights is sought in State courts" (R. 67).

OUTLINE OF ARGUMENT

I. Racial covenants restrictive of occupancy have developed through an uncritical distortion of doctrines concerning restrictions on use of property.

A. Historical development of devices restrictive of use of real property.

B. The distinction between restrictions upon the use of property and restrictions upon the occupancy of property by members of unpopular minority groups.

II. The right to use and occupy real estate as a home is a civil right guaranteed and protected by the Constitution and laws of the United States.

A. Originating in ancient common law, this civil right is expressly protected by the Fourteenth Amendment and the Civil Rights Act.

B. This civil right includes the right to own, use and occupy real estate as a home.

III. Under the Fourteenth Amendment no state may deny this civil right to any person solely because of his race, color, religion or national origin.

A. It is well settled that legislation conditioning the right to use and occupy property solely upon the basis of race, color, religion or national origin violates the Fourteenth Amendment.

B. A civil right guaranteed by the Fourteenth Amendment against invasion by a legislature is also protected against invasion by the judiciary.

IV. Judicial enforcement of the racial restrictive covenant here involved is a denial by the State of Michigan of the petitioners' civil rights.

A. The decree below was based solely upon race.

B. It is the decree of the state court which denies petitioners the use and occupancy of their home.

C. Neither the existence of the restrictive agreement nor the fact that the state's action was taken in reference thereto alters in any way the state's responsibility under the Fourteenth Amendment for infringing a civil right.

The fact that neither petitioners nor their grantors were parties to the covenant further emphasizes the state's responsible and predominant role in the action taken against them.

D. Petitioners' right to relief in this case is not affected by the decision in *Corrigan* v. *Buckley*.

V. While no state-sanctioned discrimination can be consistent with the Fourteenth Amendment, the nation-wide destruction of human and economic values which results from racial residential segregation makes this form of discrimination peculiarly repugnant.

A. Judicial enforcement of restrictive covenants has created a uniform pattern of unprecedented overcrowding and congestion in the housing of Negroes and an appalling deterioration of their dwelling conditions. This extension and aggravation of slum conditions have in turn resulted in a serious rise in disease, crime, vice, racial tension and mob violence.

B. There are no economic justifications for restrictive covenants against Negroes. Real property is not destroyed or depreciated solely by reason of Negro occupancy and large segments of the Negro population can afford to live in areas from which they are barred solely by such covenants. The sole reason for the enforcement of covenants are racial prejudice and the desire on the part of certain operators to exploit financially the artificial barriers created by covenants.

VI. Judicial enforcement of this restrictive covenant violates the treaty entered into between the United States and other members of the United Nations under which the agreement here sought to be enforced is void.

Summary of Argument

Racial restrictive covenants of the type involved in this case have developed through the uncritical distortion of doctrines concerning restrictions on the use of property. Equitable enforcement of covenants restricting the use of land was an innovation introduced into the law of England to accomplish socially desirable delimitations of the functions which might be carried on in particular areas. Such restrictions affected all persons equally and in the same way. During this century, however, equitably enforced restrictive covenants have been used in America for the new and entirely unrelated purpose of preventing the ownership and occupancy of homes by unpopular minority groups. The discriminatory effect of these latter day covenants and the absence of any resulting advantage to society prevent the earlier use covenants from affording any analogy justifying the enforcement of racial covenants restricting occupancy.

Beyond their lack of historical or analogical justification in the common law, the judicial enforcement of racial restrictive covenants infringes the civil right to use and occupy real property as a home without legally sanctioned racial impediments. The right freely to acquire and occupy land, early declared by Blackstone and other common law writers, survives today under protection of the Constitution and laws of the United States. After discussion in Congress, this right was expressly protected in the Civil Rights Act against all restrictions based on race. From the *Civil Rights Cases* to *Buchanan* v. *Warley*, this Court has protected the right of a willing buyer to acquire property from a willing seller and to use it freely as his own, without state imposed impediment based upon race, as a fundamental civil right protected by the Fourteenth Amendment.

While *Buchanan* v. *Warley* protected the right in question against infringement by statute and *Harmon* v. *Tyler* protected it against infringement by a combination of private action and statutory sanction, the rationale of these cases leaves no room for a different conclusion where judicial action in the absence of statute has accomplished the same result. In a growing body of analogous situations this Court has protected fundamental civil rights against judicial infringement.

The sole argument against applying a doctrine which struck down racial zoning statutes to the case at bar is based upon the fact that the court's action here is founded upon a private agreement. But the private agreement is not self-executing. The determination of the state to enforce the agreement involves the subordination of a fundamental civil right to considerations of public interest promoted by giving covenantors the benefit of their bargain. The obligations of the Fourteenth Amendment may not thus be diminished

or evaded. This Court has consistently so ruled in a variety of cases involving conflicts between fundamental civil rights on the one hand and various interests of property and public security on the other.

The significance of the private agreement is further minimized, and the role of the state as the effective engineer of discrimination is further emphasized by the fact that neither the petitioner grantees in this case nor their grantors were signers of the restrictive agreement. A special legal doctrine and an extraordinary application of state force were necessary to make effective the racial discrimination of which petitioners complain.

A vast amount of authoritative sociological data demonstrates that health, morals and safety are impaired on a national scale as a consequence of the widespread racial restrictive covenants. Property values are also impaired. Evils affecting the segregated minorities inevitably injure the community as a whole. Thus, although no state sanctioned discrimination can be consistent with the Fourteenth Amendment, the nationwide destruction of human and economic values which results from racial residential segregation makes this form of discrimination peculiarly repugnant.

The human rights provisions of the United Nations Charter, as treaty provisions, are the supreme law of the land and no citizen may lawfully enter into a contract in subversion of their purposes. The restrictive agreement here presented for enforcement falls within this proscription.

ARGUMENT

Preliminary Statement

In 1917, after the decision of this Court in *Buchanan* v. *Warley*, it could reasonably have been predicted that life in these United States would not be disfigured by the zoning of human beings. But seekers after legal means to accomplish what the Court had proscribed were persistent in their efforts to bring the ghetto to America, and courts, misled by the presumed license of *Corrigan* v. *Buckley*, have too often assisted them in doing so.

The areas affected have become so large and so numerous, the groups restricted so diverse, that the restrictive covenant today must be recognized as a matter of gravest national concern. Aspects of the problem have been litigated in at least twenty-one states during the last twenty years. These cases reveal covenants affecting areas as large as one thousand lots[a] and twenty-six city blocks.[b] These restrictions do not run only against Negroes. Courts have been asked to exclude from the ownership or occupancy of land persons of Arabian, Armenian, Chinese, Ethiopian, Greek, Hindu, Korean, Persian, Spanish and Syrian ancestry as well as American Indians, Hawaiians, Jews, Latin Americans and Puerto Ricans, irrespective of citizenship. A petition for certiorari now pending before this Court shows a clergyman excluded from occupancy of the parsonage of his church.[c] Such are the consequences of the restrictive covenant.

Surely, a device of unreason and bigotry cannot be permitted to destroy the essential character and oneness of America as a community,—"not while this Court sits."

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[a] Mays v. Burgess, 147 F. (2d) 869 (District of Columbia—1944).
[b] Phillips v. Wearn, 226 N. C. 290 (1946).
[c] Trustees of the Monroe Avenue Church of Christ et al. v. Perkins et al., No. 153, October Term, 1947.

I

Racial Covenants Restrictive of Occupancy Have Developed Through an Uncritical Distortion of Doctrines Concerning Restrictions on Use of Property.

Doctrines originating in and having proper application to limitations of *how* property shall be used have in recent years been distorted and unjustifiably applied to limitations of *who* shall occupy property.

A. *Historical Development of Devices Restrictive of the Use of Real Property.*

While the law relative to restrictions on the use of real property developed along lines historically different from those which led to the development of the doctrines relative to illegal restraints on alienation, the basic considerations of policy underlying each are essentially the same. A wise and ancient policy, which promotes those principles of law which permit the most beneficial use of the land resources of the country, is best served by allowing property to be freely alienable so that it may come into the hands of him who can best use it, and the same policy allows a person to put the property to the lawful use which he considers most advantageous.

The law has extended no greater favor to restrictions on the free use and enjoyment of land than to restrictions upon the free alienation of land. This is evidenced by the reluctance and, in some cases, the refusal, of courts to extend traditional devices or to create new devices whereby a more complete and simpler expedient for controlling use of another's land would be afforded.

The development of the law relative to restrictions on use is more obscure than that relative to restrictions on alienation. Two devices, perhaps, antedated the restrictive covenant. An owner of land might convey a part thereof subject to a condition subsequent that the land conveyed should not be used in a particular manner so as to affect the part retained, upon breach of which condition the conveyor might exercise his power to terminate the grantee's estate. Or the owner of one parcel might acquire by grant or reservation an easement restricting uses to be made upon another parcel. Neither could accomplish a restriction of land use save within narrow limits.[1]

Covenants respecting the use of land developed slowly, and within similarly circumscribed areas. Enforcement in the law courts of covenants, except as between the parties thereto, was a deviation from the common law rules that a chose in action was nonassignable, and that only a party to a contract can be held liable thereon.[2]

It appears that prior to the middle of the sixteenth century, both the benefit and burden of a covenant contained in a lease ran to an assignee of the leasehold, so that the as-

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[1] Both devices necessitated an instrument under seal. The power of termination for breach of condition could neither be assigned *inter vivos* nor devised, and easements the benefit of which was in gross did not run either as to benefit or burden. Common law easements could be created only in a limited class of cases, the law not favoring the creation of new forms of easements not known to the early law. Neither device was afforded a remedy by which actual or literal performance of the restriction could be judicially compelled. Stone, *Equitable Rights and Liabilities of Strangers to a Contract,* 18 COL. L. REV. 291-293.

[2] "The terms 'real covenants' or 'covenants running with the land' are of course metaphorical. The covenants are always personal in the sense that they are enforced in personal actions for damages, etc.; and they cannot actually run with the land as Coke seemed to think; the question is merely how far the transfer of an interest in land will also transfer either the benefit or the burden of covenants concerning it." CLARK, COVENANTS AND INTERESTS RUNNING WITH LAND, 73.

signee of the lessee might be held liable on the covenant, and became entitled to enforce it. But, neither the benefit of the covenant passed to, nor the burden of the covenant was imposed upon, the assignee of the reversion.[3] In 1540, the Statute of Covenants[4] declared that lessors and their assigns should have the right to enforce covenants and conditions against lessees and their assigns, and conferred reciprocal rights upon lessees and their assigns to enforce covenants against lessors and their assigns.[5] Limitations upon the running of such covenants were imposed in *Spencer's* case,[6] which declared that the covenant must "touch or concern" the land demised, otherwise it would not run, and that even though the covenant touched or concerned the land, if it concerned likewise a thing which was not in being at the time of the demise, but which was to be built or created thereafter, assignees would not be bound unless they were expressly mentioned.[7] Where the covenant was made between owners in fee simple, not in connection with a lease, the additional requirement of "privity of

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[3] 1 Wms. Saunders, (1st Am. ed.) 240a, n. 3; 1 SMITH'S LEADING CASES (8th ed.) 150; 1 TIFFANY, LANDLORD & TENANT, 968-969.

[4] 32 Hen. VIII, c. 34 (1540).

[5] This statute was not enacted entirely out of a desire to broaden the covenant device. "The reason for the enactment of the statute was that the monasteries and other religious and ecclesiastical houses had been dissolved and their lands had come into the possession of the king, who distributed them to the lords. Much of the lands was subject to leases when they fell into the hands of the king, and the monks had inherited in leases various covenants and provisions for their benefit and advantage. At the common law no person could take the benefit of any covenant or condition except such as were parties or privies thereto, so that the grantees of the king could not enforce the covenants in the leases. These things were recited in the preamble, and the statute was enacted to give to the grantees of the king the same remedies that the original lessors might have had." Purvis v. Shuman, 273 Ill. 286, 112 N. E. 679 (1916).

[6] 5 Coke 16.

[7] These limitations caused no little confusion in the law. CLARK, *op. cit. supra* note *8, 74 et seq.*

estate'' must be satisfied[8] and, even when all requirements were satisfied, the English courts refused to permit the running of the burden of such a covenants so as to be enforceable against a transferee of the land.[9] Until equity commenced the exercise of its peculiar powers in the covenant field, the sole remedy in event of breach was, of course, an action for damages.

Prior to the middle of the nineteenth century, covenants not to use land in a particular manner were specifically enforceable in equity by injunction against the promisor where the requisite inadequacy of a legal remedy existed.[10] New developments followed the decision in 1848 in *Tulk* v. *Moxhay*,[11] which established that a covenant as to the use of land might affect a subsequent purchaser who takes with notice thereof, equity in such cases enjoining a use of the land in violation of the covenant.[12] The requirements of touching and concerning privity of estate were swept aside[13] and a more workable restrictive device created.

With the urbanization of the population, and the more crowded conditions of modern life, the desire to secure suit-

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[8] Here again the requirement was not exact, and divergent views followed. CLARK, *op. cit. supra* note *8*, 91 *et seq.*

[9] Austerberry v. Oldham, 29 Ch. D. 750; CLARK, *op. cit. supra* note *8*, 113; 3 TIFFANY, REAL PROPERTY (3rd ed.) 445.

[10] Martin v. Nutkin, 2 P. Wms, 266; Lord Grey v. Saxon, 6 Ves. 106.

[11] 2 Phil. 774, 41 Eng. Rep. 1143.

[12] Whether these restrictions are enforced as contracts concerning the land, or as servitudes or easements on the land, is still a subject of speculation. The opposing theories are analyzed in CLARK, *op. cit. supra* note *8*, 149 *et seq.*

[13] CLARK, *op. cit. supra* note *8*, 150.

able home surroundings led to a demand for real estate limited solely to development for residential purposes. This natural desire of householders has been exploited by land developers and realtors so that the restriction of particular areas of property in or near American cities to residential use is now becoming the rule rather than the exception. The legal machinery to achieve this end has been found in the main not in the ancient rules of easements or covenants enforceable only at law, but in the activities of courts of equity in enforcing restrictions as to use of land when reasonable. Within its historical framework, the covenant enforceable in equity has thus achieved widespread success and popularity as a device capable of accomplishing a measurable control over uses to which a neighbor's land might be put. Its accomplishments in this wise advanced the public weal by promoting healthier, safer and morally superior residential areas through specialization of use activities upon propinquous lands. Such limited use restrictions were accomplished without entrenchment upon the tenet of individual freedom of use and enjoyment of property.

B. *The Distinction Between Restrictions Upon the Use of Property and Restrictions Upon the Occupancy of Property by Members of Unpopular Minority Groups.*

From its inception until the wane of the last century, the restrictive covenant enforceable in equity was always and only an agent selective of the type of use which might be made of another's land. Neither the history of its development nor the economic or social justifications for its judicial enforcement disclose a basis for its employment as a racially discriminatory preventive of occupancy. This novel twist in the law was introduced by historical acci-

dent,[14] and has survived only because of judicial indifference toward the consequent distortion of fundamental concepts and principles and the economic and social havoc thereby wrought:

1. The distinction between restrictions on use and those on occupancy is fundamental, but is completely ignored. The concept of use restrictions before the birth of racial restrictive covenants had been, and with their sole exception, still is in terms of type of structure or type of activity upon the land. Property was left open to occupancy by any person, *including him who engaged in the inhibited* activity in another place. The distinction is between who occupies the land, and what he does with it. Restrictions against manufacturing uses prevented the operation of factories on the restricted land, but industrialists and employees might nevertheless establish their residences there; those against taverns, gambling dens and houses of prostitution did not prohibit occupany by tavernkeepers, gamblers and *prostitutes who plied their trade elsewhere.*

2. The cases enforcing nonracial covenants dealt with restrictions possessing the equality of personal application implicit in reasonableness. Race or other personal

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[14] The law relative to the enforceability in equity of racial restrictions against occupancy stems from *Los Angeles Investment Co.* v. *Gary*, 181 Cal. 680, 186 P. 596 (1918), which followed two years behind *Buchanan* v. *Warley*. The decision was 3-2 and, as the court expressed in its opinion, it was not "favored by either brief or argument on behalf of the respondents," (186 Cal. 681) the Negro occupants. The restriction was sought to be imposed by condition subsequent, rather than by covenant, and the court pointed out that "what we have said applies only to restraints on use imposed by way of condition and not to those sought to be imposed by covenant merely. The distinction between conditions and covenants is a decided one and the principles applicable quite different." (Id., 683). Nevertheless, and notwithstanding the fallacy *in analogizing a restriction on occupancy* to one on use, courts subsequently faced with the racial occupancy covenant followed the lead supplied by this case.

considerations could not be factors in such an equation; only type of use could be important. All persons, irrespective of race, were alike bound by the restriction and alike free to make any unrestricted use of the land. Irrespective of race, every owner of the restricted land possessed a perfect privilege to put the land to any use uninhibited by the covenant; nor was race ever an exemption from the operation of the restriction for, irrespective of race, every owner of the restricted land was bound to observe the restriction. Racial covenants, however, ignore all reasonable considerations and ground their discriminations pointedly on race alone.

3. Nonracial covenants effected only prohibitions which accorded with the public good. The proscribed uses were usually illegal, immoral, or unsafe to the community. Many constituted indictable offenses or abateable nuisances. All were of such character that they could better be conducted elsewhere. The same prohibitions could be, and frequently were, effected by legislation.[15] But occupancy of land by members of unpopular minority groups does not fall within the above categories.[16] The absence of all relation to the public health, morals, safety or general welfare precludes its prohibition by statute.[17]

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[15] *Standard Oil Co.* v. *Marysville,* 279 U. S. 582; *Gorieb* v. *Fox,* 274 U. S. 603; *Zahn* v. *Board of Public Works,* 274 U. S. 325; *Euclid* v. *Ambler Realty Co.,* 272 U. S. 365; *St. Louis Poster Advertising Co.* v. *St. Louis,* 249 U. S. 269; *Pierce Oil Co.* v. *Hope,* 248 U. S. 498; *Thomas Cusack Co.* v. *Chicago,* 242 U. S. 526; *Northwestern Laundry Co.* v. *Des Moines,* 239 U. S. 486; *Hadacheck* v. *Sabastian,* 239 U. S. 394; *Reinman* v. *Little Rock,* 237 U. S. 171; *Laurel Hill Cemetery* v. *San Francisco,* 216 U. S. 358; *Welch* v. *Swasey,* 214 U. S. 91; *Bacon* v. *Walker,* 204 U. S. 311; *Fischer* v. *St. Louis,* 194 U. S. 361.

[16] *Buchanan* v. *Warley,* 245 U. S. 60; *Harmon* v. *Tyler,* 273 U. S. 668; *City of Richmond* v. *Deans,* 281 U. S. 704; *Crist* v. *Henshaw,* 196 Okl. 168 (1945).

[17] See Point V of this brief.

4. Nonracial covenants did not subvert individual rights of property. They affected only a single constituent of property—use; all other attributes of property, including occupancy, retained their traditional freedom. The curtailment in freedom of user thus effected was a compromise justified by the benefit flowing from the reconciliation of the innumerable and conflicting freedoms of use possessed by others. Racial covenants destroy the essence of property; they represent an obliteration, not a compromise.

5. Nonracial covenants drew the substance of their validity from their purpose and effect as engineers of superior residential areas. Racial occupancy restrictions cannot reasonably be considered as improving the health, morals, safety or general welfare of the occupants of the restricted area.[18] On the contrary, and at the same time, their cumulative economic and social effects have impaired the health, morals, safety and general welfare of all.[19]

Such use of land as is characteristically proscribed by nonracial restrictive covenants is likely to constitute a serious injury to the neighboring landowner and a matter of concern to the state. But in our democratic society the skin color, national origin or religion of the occupant of property cannot be a legal injury to a neighbor or a matter of concern to the state.

The constitutional consequence of the foregoing distinctions is that this Court has upheld state statutes imposing various reasonable restrictions on use[20] but, beginning with *Buchanan* v. *Warley*, has uncompromisingly struck down every effort of the states to impose racial residential restrictions by legislation.[21] That conclusion was inevitable.

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[18] See cases cited in footnote 16 *supra*.
[19] See Point V of this brief.
[20] See cases cited in footnote 15 *supra*.
[21] See cases cited in footnote 16 *supra*.

II

The Right to Use and Occupy Real Estate as a Home is a Civil Right Guaranteed and Protected by the Constitution and Laws of the United States.

Blackstone pointed out that the third absolute right "is that of property, which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land."[22] This right is expressly protected by the Fourteenth Amendment and the Civil Rights Acts[23] against invasion by the states on racial grounds.

The Congressional debates after the adoption of the Thirteenth Amendment and preceding the enactment of the Civil Rights Act of 1866 show that Congress intended to protect the fundamental civil rights of the freedmen. High on the list of rights to be protected was the right to own property. Some doubts were expressed by the opponents of the measure as to its constitutionality, and particularly the right of Congress to confer citizenship upon the former slaves without an amendment.[24] But neither the proponents of the Civil Rights Act nor its opponents doubted that citizens of the United States had an inherent right to acquire, own and occupy property.[25] After the enactment of the Fourteenth Amendment, Congress reenacted the Civil

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[22] Blackstone's Commentaries, p. 138.

[23] See: 8 U. S. C. 42.

[24] Flack, Adoption of the Fourteenth Amendment (John Hopkins Press, 1908), p. 21.

[25] See: Debate between Senators Cowan and Trumbull, Congressional Globe, 39th Cong., 1st Session, Part 1, pp. 499-500.

Rights Act with a few modifications, expressly stipulating therein:

> "All citizens of the United States shall have the same right in every State and Territory as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."[26]

Throughout the debates on the Amendment and the Civil Rights Bill there is a clear perception that freedom for the former slave without protection of his fundamental right to own real or personal property was meaningless. One of the Senators cited as an example of the oppression from which the freedmen must be protected the fact that in 1866 in Georgia "if a black man sleeps in a house overnight, it is only by leave of a white man,"[27] and another asked: "Is a freeman to be deprived of the right of acquiring property, having a family, a wife, children, home?"[28]

In 1879 this Court construed the Fourteenth Amendment as containing a positive immunity for the newly freed slaves against "legal discriminations * * * lessening the security of their enjoyment of the rights which others enjoy"[29] and in 1917 this Court construed the Civil Rights Act as dealing "with those fundamental rights in property which it was intended to secure upon the same terms to citizens of every race and color."[30]

In the *Civil Rights Cases* this Court, while holding that sections of the Civil Rights Act were unconstitutional

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[26] 8 U. S. C. 42.
[27] Congressional Globe, 39th Cong., 1st Session, Part 1, p. 589.
[28] Senator Howard, Ibid., p. 504.
[29] *Strauder* v. *West Virginia*, 100 U. S. 303, 308.
[30] *Buchanan* v. *Warley*, 245 U. S. 60, 79.

because they applied to individual action, at the same time emphasized the application of the Fourteenth Amendment to state action of all types, whether legislative, judicial or executive.

> "In this connection it is proper to state that civil rights, such as are guaranteed by the Constitution against state aggression, cannot be impaired by the wrongful acts of individuals, unsupported by state authority in the shape of laws, customs or judicial or executive proceedings." [31]

It was thus made clear that the Fourteenth Amendment does prohibit the wrongful acts of individuals where supported "by state authority in the shape of laws, customs, or *judicial* or executive proceedings." (Italics ours.)

Among the rights listed as protected against legislative, judicial and executive action of the states was the right "to hold property, to buy and to sell."

The right that petitioners assert is their civil right to occupy their property as a home—the same right recognized by this Court in *Buchanan* v. *Warley*:

> "The Fourteenth Amendment protects life, liberty, and property from invasion by the States without due process of law. Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, use, and dispose of it. The Constitution protects these essential attributes of property * * *" [32]

In the instant case the respondents seek by means of state court action to evict petitioners from the property they own and are occupying as a home. On the face of the

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[31] 109 U. S. 3, 17.
[32] 245 U. S. 60, 74.

pleadings they do not seek to divest petitioners of title. But the effect of denying to petitioners the right to occupy their property as a home in a residential neighborhood, under any circumstances, is a denial of the civil right set out above.

III

Under the Fourteenth Amendment, No State May Deny This Civil Right to Any Person Solely Because of His Race, Color, Religion, or National Origin.

A. *It is Well Settled That Legislation Conditioning the Right to Use and Occupy Property Solely Upon the Basis of Race, Color, Religion, or National Origin Violates the Fourteenth Amendment.*

Racial restrictions by states of the right to acquire, use, and dispose of property are in direct conflict with the Constitution of the United States. The first efforts to establish racial residential segregation were by means of municipal ordinances attempting to establish racial zones. This Court, in three different cases, has clearly established the principle that the purchase, occupancy, and sale of property may not be inhibited by the states solely because of the race or color of the proposed occupant of the premises.[33]

In *Buchanan* v. *Warley, supra,* an ordinance of the City of Louisville, Kentucky, prohibited the occupancy of lots by colored persons in blocks where a majority of the residences were occupied by white persons and contained the same

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[33] *City of Richmond* v. *Deans,* 281 U. S. 704; *Harmon* v. *Tyler,* 273 U. S. 668; *Buchanan* v. *Warley,* 245 U. S. 60.

prohibition as to white persons in blocks where the majority of houses were occupied by colored persons. Buchanan brought an action for specific enforcement of a contract of sale against Warley, a Negro, who set up as a defense a provision in the contract excusing him from performance unless he should have the right under the laws of Kentucky and of Louisville to occupy the property as a residence and contended that the ordinance prevented him from occupying the property. Buchanan replied that the ordinance was in violation of the Fourteenth Amendment.

In a unanimous opinion by Mr. Justice Day, this Court decided the following question:

> "The concrete question here is: May the occupancy, and, necessarily, the purchase and sale of property of which occupancy is an incident, be inhibited by the states, or by one of its municipalities, solely because of the color of the proposed occupant of the premises? That one may dispose of his property, subject only to the control of lawful enactments curtailing that right in the public interest, must be conceded. The question now presented makes it pertinent to inquire into the constitutional right of the white man to sell his property to a colored man, having in view the legal status of the purchaser and occupant" (245 U. S. 60, at p. 75).

The decision in the *Buchanan* case disposed of all of the arguments seeking to establish the right of a state to restrict the sale of property by excluding prospective occupants because of race or color:

Use and occupancy is an integral element of ownership of property:

> " * * * Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, use, and dispose of it.

The Constitution protects these essential attributes of property. *Holden* v. *Hardy*, 169 U. S. 366, 391, 42 L. ed. 780, 790, 18 Sup. Ct. Rep. 383. Property consists of the free use, enjoyment, and disposal of a person's acquisitions without control or diminution save by the law of the land. 1 Cooley's Bl. Com. 127." (245 U. S. 60, at p. 74.)

Racial residential legislation can not be justified as a proper exercise of police power:

"We pass, then, to a consideration of the case upon its merits. This ordinance prevents the occupancy of a lot in the city of Louisville by a person of color in a block where the greater number of residences are occupied by white persons; where such a majority exists, colored persons are excluded. This interdiction is based wholly upon color; simply that, and nothing more * * *

"This drastic measure is sought to be justified under the authority of the state in the exercise of the police power. It is said such legislation tends to promote the public peace by preventing racial conflicts; that it tends to maintain racial purity; that it prevents the deterioration of property owned and occupied by white people, which deterioration, it is contended, is sure to follow the occupancy of adjacent premises by persons of color.

"It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution." (245 U. S. 60, at p. 81.)

Race is not a measure of depreciation of property:

"It is said that such acquisitions by colored persons depreciate property owned in the neighborhood

> by white persons. But property may be acquired by undesirable white neighbors, or put to disagreeable though lawful uses with like results.'' (245 U. S. 60, at p. 82.)

The issue of residential segregation on the basis of race was squarely met and disposed of in the *Buchanan* case. Each of the arguments in favor of racial segregation was carefully considered and this Court, in determining the conflict of these purposes with our Constitution, concluded:

> ''That there exists a serious and difficult problem arising from a feeling of race hostility which the law is powerless to control, and which it must give a measure of consideration, may be freely admitted. But its solution cannot be promoted by depriving citizens of their constitutional rights and privileges.'' (245 U. S. 60, at pp. 80-81.)

The determination of this Court to invalidate racial residential segregation by state action regardless of the alleged justification for such action is clear from two later cases.

In the case of *City of Richmond* v. *Deans*, a Negro who held a contract to purchase property brought an action in the United States District Court seeking to enjoin the enforcement of an ordinance prohibiting persons from using as a residence any building on a street where the majority of the residences were occupied by those whom they were forbidden to marry under Virginia's Miscegenation Statute. The Circuit Court of Appeals, in affirming the judgment of the trial court, pointed out: ''Attempt is made to distinguish the case at bar from these cases on the ground that the zoning ordinance here under consideration bases its interdiction on the legal prohibition of intermarriage and not on race or color; but, as the legal prohibition of intermarriage is itself based on race, the question here, in final analysis, is identical with that which the Supreme Court

has twice decided in the cases cited. [*Buchanan* v. *Warley* and *Harmon* v. *Tyler*.]"[34] This Court affirmed this judgment by a *Per Curiam* decision.[35]

The principles of the *Buchanan* case have also been applied in cases involving the action of the legislature coupled with the failure of individuals to act. In *Harmon* v. *Tyler*, a Louisiana statute purported to confer upon all municipalities the authority to enact segregation laws, and another statute of that state made it unlawful in municipalities having a population of more than 25,000 for any white person to establish his residence on any property located in a Negro community without the written consent of a majority of the Negro inhabitants thereof, or for any Negro to establish his residence on any property located in a white community without the written consent of a majority of the white persons inhabiting the community.

An ordinance of the City of New Orleans made it unlawful for a Negro to establish his residence in a white community, or for a white person to establish his residence in a Negro community, without the written consent of a majority of the persons of the opposite race inhabiting the community in question. Plaintiff, alleging that defendant was about to rent a portion of his property in a community inhabited principally by white persons to Negro tenants without the consent required by the statute and the ordinance, prayed for a rule to show cause why the same should not be restrained.

Defendant contended that the statutes and the ordinance were violative of the due process clause of the Fourteenth Amendment. The trial court sustained defendant's position. On appeal, the Supreme Court of Louisiana reversed,

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[34] *City of Richmond* v. *Deans*, C. C. A.—4th, 37 F. (2d) 712, 713.
[35] 281 U. S. 704.

and upheld the legislation. On appeal to this Court, the decision of the Supreme Court of Louisiana was reversed on authority of *Buchanan* v. *Warley*. A like disposition of the same legislation was had in the Circuit Court of Appeals for the Fifth Circuit in an independent case.

In the instant case, all of the alleged evils claimed to flow from mixed residential areas which are relied upon for judicial enforcement of racial restrictive covenants were advanced in the *Buchanan* and the other two cases as justification for legislative action to enforce residential segregation. In the *Buchanan* case, this Court dealt with each of the assumed evils and held that they could not be solved by segregated residential areas and did not warrant the type of remedy sought to be justified. Efforts to circumvent this decision have been summarily disposed of by this Court.[36]

The right petitioners here assert is the civil right to occupy their property as a home—the same right which was recognized and enforced in *Buchanan* v. *Warley*.

B. *Civil Rights Are Guaranteed by the Fourteenth Amendment Against Invasion by the Judiciary.*

It is equally well settled that the limitations of the Fourteenth Amendment apply to the exercise of state authority by the judiciary. As long ago as 1879, in *Ex Parte Virginia*,[37] this Court specifically recognized that the judiciary enjoyed no immunity from compliance with the requirements of the Fourteenth Amendment. In that case the state judge was held to be subject to the federal Civil Rights Act, despite the plea that in selecting a jury in a manner which excluded otherwise qualified persons solely on account of their color, the judge was exercising a function of his judicial

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[36] *Harmon* v. *Tyler* and *City of Richmond* v. *Deans, supra.*
[37] 100 U. S. 339.

office. In an unbroken line of precedents since that time, this Court has again and again reaffirmed this proposition. For example, in *Twining* v. *New Jersey*,[38] this Court said:

> "The law of the state, as declared in the case at bar, which accords with other decisions * * * permitted such an inference to be drawn. The judicial act of the highest court of the state, in authoritatively construing and enforcing its laws, is the act of the state. * * * The general question, therefore, is, whether such a law violates the Fourteenth Amendment, either by abridging the privileges or immunities of citizens of the United States, or by depriving persons of their life, liberty or property without due process of law." (211 U. S. 78, at pp. 90-91.)

It is readily conceded that the "law" to which the Court there referred was actually one of a series of rules, common law as well as statutory, which had been developed by the state authority, legislative and judicial, for the conduct of criminal trials. So classified, the opinion demonstrates the complete acceptance by this Court of the proposition originally announced in *Ex Parte Virginia*, that the procedure of state courts, whether provided by legislation or rule of decision by state courts, must meet the requirements and limitations of the Fourteenth Amendment.[39]

The obligation of the state judiciary to comply with the limitations of the Fourteenth Amendment, however, is not confined to procedure. On the contrary this Court has frequently tested decisions of state courts on matters of substantive law against the requirements of the federal Consti-

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[38] 211 U. S. 78.

[39] See also: *Hysler* v. *Florida*, 315 U. S. 411; *Brown, Ellington & Shields* v. *Mississippi*, 297 U. S. 278; *Moore* v. *Dempsey*, 261 U. S. 86; *Norris* v. *Alabama*, 294 U. S. 587; *Powell* v. *Alabama*, 287 U. S. 45; *Brinkerhoff Faris Co.* v. *Hill*, 281 U. S. 673; *Carter* v. *Texas*, 177 U. S. 442.

tution and has equally frequently recognized that it was obliged so to do by the Fourteenth Amendment. This is aptly demonstrated by the opinion of this Court in *Cantwell* v. *Connecticut*.[40] In that case, it will be remembered, the petitioner had been convicted on an indictment which contained four counts charging violation of express statutory prohibitions, and a fifth count which charged a common law breach of the peace. The petitioner contended in applying for certiorari that his conviction on each of these counts violated the Fourteenth Amendment. This Court recognized that both the express statutory provisions and the substantive determination of the common law obligation by the state court raised similar constitutional questions under the Fourteenth Amendment. In fact, this Court stated:

> "Since the conviction on the fifth count was not based upon a statute, but presents a substantial question under the federal Constitution, we granted the writ of certiorari in respect of it." (310 U. S. 266 at p. 301.)

Again, at pp. 307-308:

> "Decision as to the lawfulness of the conviction (on the fifth count) demands the weighing of two conflicting interests. The fundamental law declares the interest of the United States that the free exercise of religion be not prohibited and that freedom to communicate information and opinion be not abridged. The state of Connecticut has an obvious interest in the preservation and protection of peace and good order within her borders. We must determine whether the alleged protection of the State's interest, means to which end would, in the absence of limitation by the federal Constitution, lie wholly within the State's discretion, has been pressed, in this instance, to a point where it has come into fatal

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[40] 310 U. S. 296.

collision with the overriding interest protected by the federal compact."

At the next term this Court, even more forcibly enunciated the requirement that decisions by state courts on substantive matters satisfy the requirements of due process. In *Milk Wagon Drivers Union of Chicago, Local 753* v. *Meadowmoor Dairies, Inc.*,[41] this Court granted certiorari to review an injunction of an Illinois court issued on the authority of that state's common law which prohibited picketing, peaceful and otherwise, by a labor union. Despite a disagreement among the members of the Court as to the end result, it was agreed by all of the justices that the injunction had to be tested against the limitations of the Fourteenth Amendment with respect to the protection of freedom of speech. The majority, speaking through Mr. Justice FRANKFURTER, was of the opinion that the violence which had occurred outside of the picket line during the particular labor dispute was sufficient ground to justify the Illinois court in enjoining picketing, although admittedly the injunction deprived the trade union of its right to disseminate information with respect to the labor dispute.

The dissent voiced by Mr. Justice BLACK addressed itself to the propriety of limiting the right of free speech because of violence not directly shown to have occurred in connection with the picketing. Both majority and minority, however, applied to the injunction the test of the Fourteenth Amendment. The unanimity in this Court on that proposition was plainly manifested when on the same day a unanimous Court again in *American Federation of Labor* v. *Swing*,[42] tested another Illinois injunction, also issued on the authority of the common law of that state, which restrained peaceful picketing on the ground that the labor dispute was

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[41] 312 U. S. 287.
[42] 312 U. S. 321.

not one between the complaining employers and his employees. Measured in terms of the Fourteenth Amendment, the Court concluded that this was an unlawful interference by the state with the right of free speech of the members of the trade union involved.[43]

So strong is this Court's determination to protect fundamental rights against invasion by the state judiciary that even in criminal contempt cases it has tested the validity of such convictions against the requirements of the Fourteenth Amendment. Thus, in *Bridges* v. *State of California,*[44] the majority of the Court was of the opinion that punishment of a trade union official and newspaper for contempt because of out of court statements, which had been made with respect to litigation pending in the state court, was a violation of the Fourteenth Amendment because it was an unwarranted interference with the right of free speech. The minority, disagreeing with respect to the unreasonableness of the state's action, readily agreed that the conviction had to be tested against the limitations of the Fourteenth Amendment.

Thus, both on analysis and on authority, it is plain that the acts of state courts are those of the state itself within the meaning of the limitations of the Fourteenth Amend-

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[43] It is significant that in the *Meadowmoor* case, even the majority recognized that if the effect of the violence which they deemed to be controlling on the constitutional issue should be shown to have been dissipated, the Fourteenth Amendment would require that the State court dissolve the injunction there approved. To the same effect see *Bakery Drivers Local* v. *Wohl,* 315 U. S. 769. See also *Cafeteria Employees Union, Local 302* v. *Angelos,* 320 U. S. 293, 294, where it was said, "We brought these two cases here to determine whether injunctions sanctioned by the New York Court of Appeals exceeded the bounds within which the 14th Amendment confines State power." It should be noticed that neither of the cases referred to have the State court relied on more for the common law authority for the issuance of the injunction.

[44] 314 U. S. 252.

ment. Any other conclusion in a common law system would be untenable. For, to the extent that the decisions of courts serve as authoritative precepts regulatory of conduct beyond the case in litigation, no logical distinction can be drawn between between the acts of the legislature and the decisions of the court. The creative role of the judiciary as a source of law to meet the demands of society by filling the interstices between precedents, and between precedent and legislation has long been recognized.[45] Where this Court is required to review the constitutionality of State law, it is plain that:

> "Whether the law of the State shall be declared by its legislature in a statute or by its highest court in a decision, is not a matter of Federal concern."[46]

IV

Judicial Enforcement of the Racial Restrictive Covenant Here Involved is a Denial by the State of Michigan of the Petitioners' Rights Under the Fourteenth Amendment.

A. *The Decree of the State Court Was Based Solely on the Race of Petitioners.*

Even a cursory examination of the record discloses that the controlling operative fact relied upon by the state court to justify ouster of petitioners from their home was their race.[47]

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[45] Cardozo, *The Judge as a Legislator,* The Nature of Judicial Process; Arthur L. Corbin, 29 YALE L. JOURNAL 771; See Swiss Code, quoted by Cardozo, *op. cit.* 140.

[46] *Erie* v. *Tompkins,* 304 U. S. 64.

[47] Interesting enough the finding of race was based solely on evidence with respect to color (R. 22).

Pleadings, proceedings, and the opinion of the State Supreme Court all demonstrate that under the law of the state precedent required petitioners' eviction if, and only if, they were found to be of other than "the Caucasian race".[48] If the trial court had made the determination that petitioners were Caucasians, they would be occupying their home peacefully without threat of eviction.

At this period in the history of the United States, it is no longer necessary to demonstrate that state action which discriminates because of the race, color, religion or national origin of persons subject to the state jurisdiction violates the Fourteenth Amendment.

B. *It is the Decree of the State Court Which Denies Petitioners the Use and Occupancy of their Home.*

The foregoing authorities and analysis were urged upon the highest court of Michigan in this case. Nevertheless, that court refused to recognize its obligation to make a decision which conformed to the requirements of the Fourteenth Amendment in other than procedural matters. The court stated:

> "While we recognize that the concept of 'due process' is incapable of exact definition, yet, ever since Buck v. Sherman, 2 Doug. 176, we have held that this constitutional right means that every person having property rights affected by litigation is entitled to notice, and a day in court, or a reasonable opportunity to appear and defend his interest. * * * Such rights

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[48] The complaint alleged that the petitioners were of "the Negro race" (R. 8); the answer denied knowledge of their ancestry but demanded strict proof (R. 10); evidence on both sides of this issue was heard and the trial court made a specific finding with respect to the matter (R. 53) found to be adequate by the State Supreme Court (R. 61).

> were accorded the defendants in the instant case'' (R. 65-66).

Not only on the basis of sound legal analysis is this Court obliged to test the decree of the state court in this case against the limitations of the Fourteenth Amendment, but the facts and surrounding circumstances dictate the necessity of such an inquiry, because it is the action of the court which will deprive the petitioners of their right to occupy their property as a home.

It has already been shown that during the year 1934 certain residents and holders of title to property located in Seebaldt's Subdivision of the City of Detroit agreed that:

> "This property shall not be used or occupied by any person or persons except those of the Caucasian race."

Subsequently, as is the usual case in connection with urban property, title to some of the fifty-three lots sought to be covered by this restrictive agreement passed into the hands of persons other than the original signers of the restrictive agreement. One such person, for reasons neither appearing in the record nor material to the issue here, conveyed title to Lot 52 to petitioners, fully complying with all of the requirements of the law of Michigan with respect to the transfer of title in fee to that piece of property.[49]

Thereafter petitioners and their family moved into the dwelling and occupied the premises as their home. Subsequently, other signers of the restrictive agreement, or

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[49] It is admitted that the federal constitution did not preclude the owner of any piece of property sought to be covered by such an agreement from freely picking and choosing among the persons whom he would permit to use or occupy his property as guests, lessees or purchasers on the basis of race, religion, color, personality, education, occupation or on the basis of absolute whim and utter caprice.

persons privy thereto, instituted the present action to evict petitioners from their home. Thus, the mere existence of the agreement was not sufficient to prevent petitioners and their family from making their home in these premises. Instead, respondents sought the aid of state authority to accomplish the purpose which they had been unable to effect by the execution of the restrictive agreement.

Theoretically, there were four other alternative courses which respondents or some of them could have taken. They might have sought to persuade petitioners to move out, and the record shows that an attempt in this direction was made (R. 22). It was unsuccessful. There was, of course, nothing unlawful about such conduct, nor did it raise any constitutional question, since truly this was the conduct of individuals with respect to other individuals.

As a second alternative they might have used force or threats of force to cause petitioners to move out. There can be no doubt but that this course would have brought down upon respondents the full force of the state authority to prevent injury to the persons or property of petitioners.

Taking a more peaceful tack, respondents might conceivably have applied to the state legislature to exercise its authority to oust petitioners from the premises in question by enacting statutes which would have compelled all persons to respect "racial characteristics" of established neighborhoods. This Court long ago decided that any such legislative action would violate the Fourteenth Amendment.[51]

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[51] *Buchanan* v. *Warley* and others. Even such an ingenious device as the one reviewed by the Texas Supreme Court in *City of Dallas* v. *Liberty Annex Corp.*, 295 S. W. 591, failed under this prohibition.

Recourse to the active police authority of the state might have been undertaken to eject petitioners, but there can be no doubt that the executive arm of the state government would have been obliged to conform to the limitations of the Fourteenth Amendment.[52]

This record is barren of any indications that it is anything other than the decree of the state court which operates to deny to petitioners the right to occupy as their home the premises to which they hold title. The decree of the Circuit Court affirmed by the Supreme Court of Michigan ordered petitioners to move from their property within ninety days and declared that they "are hereby restrained and enjoined from using or occupying said premises" (R. 53). The covenant did not prevent petitioners from purchasing, using and occupying their property.

It is not the private respondents, but the State of Michigan, acting through its courts, that prevents petitioners from using and occupying their property. Failure of the petitioners to comply with the order of the Court would set in motion governmental machinery leading to contempt citations and imprisonment in the jails maintained by the State of Michigan.

C. *Neither the Existence of the Restrictive Agreement Nor the Fact That the State's Action Was Taken in Reference Thereto Alters in Any Way the State's Responsibility Under the Fourteenth Amendment for Infringing a Civil Right.*

The existence of a legal right to acquire a home from any willing seller and to own and occupy that home has already been demonstrated under Point II of this brief.

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[52] *Home Telegraph* v. *Los Angeles*, 227 U. S. 278; *Yick Wo* v. *Hopkins*, 118 U. S. 356.

That right is recognized by the Constitution and laws of the United States and the decisions of this Court. Its exercise is protected by the Fourteenth Amendment against any racial impediment imposed by any form of state action.

In this case, it appears to be the position of respondents that only the private covenantors do the discriminating while the state, as an impartial, if essential, third party merely enforces the private agreement without concern for its content, as it allegedly would do in any other business agreement. However, the role and responsibility of the state in sanctioning or refusing to sanction such an agreement or any agreement cannot be divorced from the subject matter of the agreement. Under our system of law, judicial action in such a case as this can only be the result of the judge's conclusion that he is vindicating some interest or interests of public concern and worthy of the state's protection.

The history of restrictive covenants as outlined in Point I of this brief clearly shows the judicial balancing of interests as new doctrine emerged. In the present case, the action of the courts below must have been predicated upon a conclusion that it was a matter of serious public concern to compel the carrying out of bargains in general and to protect the private interest of the respondents in getting the benefit of their bargain in this case. The state courts failed, however, to recognize their duty to weigh these claims tending to induce state action against essential interests adversely affected by enforcement of the agreement as well as against the obligation of the state to protect the civil right involved in this case.

The predominance of social interests adverse to enforcement has given rise to the entire body of the illegal and unenforceable contracts. The recognition of such interests here, as they are developed in Point V of this brief, would

have resulted in a conclusion that the agreement was against public policy. But more significant, at the present stage of the litigation, is the fact that this Court, in a group of recent cases, has held that the desire of the state to promote well-recognized and accepted private and public interests must be subordinated to the obligation of the state to respect fundamental constitutionally protected civil rights.

In *Cantwell* v. *Connecticut*,[53] the desire to protect what the state understandably considered important public and private interests led the state court to invoke common law doctrine definitive of breach of the peace and to impose criminal sanctions against the defendant. However, in so doing, the state court caused the interests which appealed to its judgment to prevail over a fundamental civil right. This Court concluded that the abridgement of that civil right though made in favor of substantial competing interests could not stand—the constitutionally protected civil right had to be respected even if some sacrifice of other interests of legitimate concern was a necessary result.

The means employed by the court can be reasonably considered as being adapted to the accomplishment of this legitimate end. Similar basic considerations underlay the injunction in *American Federation of Labor* v. *Swing*.[54] In addition, there was legitimate public concern with protecting the interests of the employer in maintaining and operating his business. But in this case again, as in the *Cantwell* case, the state's concern to protect property and to preserve peace and good order when translated into judicial action came "into fatal collision with the overriding interests protected by the federal compact".[55]

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[53] 310 U. S. 296.
[54] 312 U. S. 321.
[55] 310 U. S. 296, 308.

In *Marsh* v. *Alabama*,[56] the concern of the state in assisting the owner of land to exclude others from his property and the general interests of the state in peace and good order could not override the right of the individual to exercise his fundamental and constitutionally protected liberty of speech and worship. A significant analogy under the National Labor Relations Act is presented by *Republic Aviation Corp.* v. *National Labor Relations Board*.[57] There this Court struck down the application of a general rule of the employer against solicitation on his property, apparently imposed in good faith and for reasonable purposes, to a situation where solicitation of union membership had occurred on the employer's parking lot at lunch time. The employer was not permitted to exercise normal and reasonable control over the use of his property when the consequence was the abridgement of a federally protected right.

In each of these cases, the state court concluded that public interests of substance were being prejudiced and injury was being suffered by private persons. With an eye solely to such considerations it regarded any effect which its judgment might have upon a civil right as an unavoidable and unintended incident of action which had ample justification. Yet, in none of these cases could the state escape the obligation of squaring its action with the overriding mandate of the Fourteenth Amendment or other source of fundamental rights regardless of the consequence of such squaring to other interests. No more can the protection of the plaintiffs here from the loss of the value of their bargain, or the vindication of any other public interest which the state court may deem important, justify the state's interference with the petitioners' right of access to a home free from all impediment based on race.

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[56] 326 U. S. 501.
[57] 324 U. S. 793.

The Fact That Neither Petitioners Nor Their Grantors Were Parties to the Covenant Further Emphasizes the State's Responsible and Predominant Role in the Action Taken Against Them.

Petitioners' grantors have not at any time agreed to refrain from selling their property to Negroes. The restrictive agreement upon which the court predicated its order directing petitioners to move from their home was signed in 1934 by predecessors in title of petitioners' grantors. Neither petitioners nor their grantors are parties to the agreement.

If any doubt exists as to the extent or significance of state action involved in court enforcement of a racial restrictive agreement as to occupancy of land between original parties to the agreement, an examination of the history of "covenants running with the land" reveals that insofar as they impose obligations on third persons, such covenants are wholly the creature of equity.

The development of the various devices to give substance to restrictions on use of land has been fully discussed in Point I of this brief. Here it is important to note that, in the words of Dean (later Chief Justice) Stone, they have their origin in contract "and their nature and extent depend upon the extent to which equity will compel compliance with the covenant, not only by and for parties to it, but by and for third persons. * * * "[58]

Further, it is asserted that in creating the doctrine of equitable servitudes as transferable choses in action, equity

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[58] Stone, "Equitable Rights and Liabilities of Strangers to a Contract," 18 COL. L. REV. 295.

exercised broader power than the common law had contemplated, for:

> "It is obvious that equity in enforcing the burden of the contracts on third persons had departed from the rules of property, because of their inadequacy and inapplicability to certain situations."[59]

Since the rights thus enforced against third persons find their basis in the powers of courts of equity alone,

> "A legitimate limitation on the doctrine of the equitable burden is the rule that such contracts will be strictly interpreted and the rule that equity may, in its discretion, refuse relief where owing to the change of conditions, enforcement of the restrictive covenant would be very burdensome to the defendant and of little benefit to the plaintiff."[60]

The chose in action created by the contract was not at common law freely transferable, but equity overcame this obstacle by holding that, "the transferee of the covenantee's land is *by operation of law* vested with the right to enforce the covenant."[61]

Dean (later Chief Justice) Stone, concluding his survey, finds proof in this doctrine that equity is still a live and forceful field of jurisprudence:

> "Consideration of the ways in which equity has extended the rights and liabilities of third persons will lead to the conclusion that, as an effective instrumentality for expanding and developing our law, equity is in no proper sense decadent, but is rather a vital force."[62]

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[59] Ibid., p. 322.
[60] Ibid., p. 323.
[61] Stone, "Equitable Rights and Liabilities of Strangers to a Contract," 19 COL. L. REV. 177, 182.
[62] Ibid., p. 191.

Should it be argued that between parties to such a restrictive agreement, as presented here, the courts have some extraordinary power to make a party keep his promise without regard to the Fourteenth Amendment, there is not even colorable basis for such an evasion of constitutional obligation where the enforcement runs against persons not party to the agreement. If, as between the original parties, any significance can be attached to the fact that the Court is giving effect to the will of the parties, in the case of a third person not a party to the contract the court is imposing upon those who never have assented an extraordinary obligation of its own devising. In the latter case—the instant case—the state, through its court of equity, becomes in a very special sense the creative and moving force, solely responsible for the abridgement of the grantor's power of disposition and the grantee's power of acquisition.

D. *Petitioners' Right to Relief in This Case Is Not Affected by the Decision in* Corrigan *v.* Buckley.

In both the trial court and in the Supreme Court of Michigan, petitioners pressed the contention that judicial enforcement of the covenant would violate the Fourteenth Amendment (R. 6, 17). The latter court disposed of this contention in the following manner:

> "It is argued that the restriction in question violates the 14th Amendment to the Constitution of the United States. Appellees say that this argument was answered in Corrigan v. Buckley, 271 U. S. 323 (70 L. ed. 969). We so read the Corrigan case, although that decision partly turned on the inapplicability of the equal protection clause of the 14th Amendment to the District of Columbia, and the appeal was dismissed for want of jurisdiction" (R. 66).

In like manner, judicial enforceability of racial restrictive covenants has generally been assumed to follow from

Corrigan v. *Buckley*.[63] A reexamination of that case will reveal that there has been widespread misconception of its holding, and will demonstrate that the issue here presented was neither presented nor decided there.

In 1921, 30 white persons, including the plaintiff and the defendant Corrigan, who owned 25 parcels of land situated in the City of Washington, executed and recorded an indenture in which they mutually covenanted that no part of these properties should be used or occupied by, or sold, leased or given to, any person of the Negro race or blood, for a period of 21 years. During the ensuing year, defendant Corrigan entered into a contract to sell to defendant Curtis, a Negro, a parcel included within the terms of the indenture. Plaintiff thereupon brought suit praying that defendant Corrigan be enjoined during the term of the indenture from conveying to defendant Curtis, and that defendant Curtis be enjoined from taking title to the lot during such period, and from using or occupying it. Defendant Corrigan moved to dismiss the bill on the grounds that the "*indenture* or *covenant* made the basis of said bill" is (1) "void in that the same is contrary to and in violation of the Constitution of the United States," and (2) "is void in that the same is contrary to public policy." Defendant Curtis moved to dismiss the bill on the ground that it appeared therein that the *indenture* or *covenant* "is void, in that it attempts to deprive the defendant, the said Helen Curtis, and others of property, without due process of law; abridges the privilege and immunities of citizens of the United States, including the defendant Helen Curtis, and other persons within this jurisdiction (and denies them) the equal protection of the law, and therefore, is forbidden by the Constitution of the United States, and especially by the Fifth, Thirteenth, and Fourteenth Amendments thereof,

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[63] 271 U. S. 323.

and the Laws enacted in aid and under the sanction of the said Thirteenth and Fourteenth Amendments." This motion was overruled. Defendants elected to stand on their motions, and a final decree was entered enjoining them as prayed in the bill. An appeal was taken to the Court of Appeals for the District of Columbia[64] where the issue was stated as follows:

> " * * * The sole issue is the power of a number of landowners to *execute* and record a covenant running with the land, by which they bind themselves, their heirs and assigns, during a period of 21 years, to prevent any of the land described in the covenant from being sold, leased to, or occupied by Negroes" (299 F. 899, 901). (Italics ours.)

After affirmance by the Court of Appeals, an *appeal* was taken to this Court;[65] based entirely upon defendants' contention that the *covenant* was *void* because it violated the Fifth, Thirteenth and Fourteenth Amendments of the Constitution and Section 1977, 1978, and 1979 of the Revised Statutes (U. S. Code, Title 8, Sections 41, 42 and 43). This Court affirmed and in so doing established the following propositions (numbers ours):

(1) "Under the pleadings in the present case the only constitutional question involved was that arising under the assertions in the motions to dismiss that the *indenture* or *covenant* which is the basis of the bill, is *'void'* in that it is contrary to and forbidden by the Fifth, Thirteenth and Fourteenth Amendments. This contention is entirely lacking

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[64] 55 App. D. C. 30, 299 F. 899 (1924).

[65] Section 250 of the Judicial Code (36 Stat. 1159), as it read on the critical date, authorized appeals in six sorts of cases, including (Third) "cases involving the construction or application of the Constitution of the United States * * *" and (Sixth) "cases in which the construction of any law of the United States is drawn in question by the defendant."

in substance or color of merit. * * * (The Court pointed out that the Fifth and Fourteenth Amendments dealt only with governmental action and not with the action of private persons, and that the Thirteenth Amendment dealt only with involuntary servitude) * * * It is obvious that none of these amendments prohibited private individuals from *entering into* contracts respecting the control and disposition of their own property; and there is no color whatever for the contention that they rendered the *indenture void* * * * (271 U. S. 323, 330).

(2) "And, plainly, the claim urged in this Court that they were to be looked to, in connection with the provisions of the Revised Statutes and the decisions of the courts, in determining the contention, earnestly pressed, that the *indenture* is *void* as being 'against public policy', does not involve a constitutional question within the meaning of the Code provision * * * (271 U. S. 323, 330).

(3) "The claim that the defendants drew in question the 'construction' of sections 1977, 1978 and 1979 of the Revised Statutes, is equally unsubstantial. The only question raised as to these statutes under the pleadings was the assertion in the motion interposed by the defendant Curtis, that the *indenture* is *void* in that it is forbidden by the laws enacted in aid and under the sanction of the Thirteenth and Fourteenth Amendments. * * * they, like the Constitutional Amendment under whose sanction they were enacted, do not in any manner prohibit or invalidate *contracts entered into* by private individuals in respect to the control and disposition of their own property. There is no color for the contention that they rendered the *indenture void;* nor was it claimed in this Court that they had, in and of themselves, any such effect * * * (271 U. S. 323, 330-331).

(4) "And while it was further urged in this Court *that the decrees of the courts below in themselves deprived the defendants* of their liberty and prop-

erty without due process of law, in violation of the Fifth and Fourteenth Amendments, this contention likewise cannot serve as a jurisdictional basis for the appeal. Assuming that such a contention, if of a substantial character, might have constituted ground for an appeal under paragraph 3 of the Code provision, *it was not raised by the petition for the appeal, or by any assignment of error, either in the Court of Appeals or in this Court;* * * * (271 U. S. 323, 331).

(5) " * * * we cannot determine upon the merits the contentions earnestly pressed by the defendants in this court that the *indenture* is not only *void* because contrary to public policy, but *is also of such a discriminatory character* that a court of equity will not lend its aid by enforcing the specific enforcement of the covenant. These are questions involving a consideration of rules not expressed in any constitutional or statutory provision, but claimed to be a part of the common or general law in force in the District of Columbia; and, plainly, they may not be reviewed under this appeal unless jurisdiction of the case is otherwise acquired.

"Hence, without a consideration of these questions, the appeal must be, and is dismissed for want of jurisdiction" (271 U. S. 323, 332). (Italics ours.)

So it is crystal clear that this Court did not and could not pass upon the constitutional propriety of judicial enforcement of a racial restrictive covenant. Such question could only be considered if the Court had acquired jurisdiction and had examined the case on its merits. While the *Corrigan* v. *Buckley* decision contains an intimation by way of dictum that no substantial constitutional question was presented by the facts of that case, it is to be remembered that this Court was not then committed to the doctrine that common law determinations of courts could constitute reviewable violations of the Federal Constitution.

V

While No State-Sanctioned Discrimination Can Be Consistent With the Fourteenth Amendment, the Nation-Wide Destruction of Human and Economic Values Which Results From Racial Residential Segregation Makes This Form of Discrimination Peculiarly Repugnant.

A. *Judicial Enforcement of Restrictive Covenants Has Created a Uniform Pattern of Unprecedented Overcrowding and Congestion in the Housing of Negroes and an Appalling Deterioration of Their Dwelling Conditions. The Extension and Aggravation of Slum Conditions Have in Turn Resulted in a Serious Rise in Disease, Crime, Vice, Racial Tension and Mob Violence.*

1. The Immediate Effects of the Enforcement of Covenants Against Negroes.

The race restrictive covenant is a relatively new device which has become the vogue in conveyancing in many urban centers of the North. Its use is increasing in epidemic proportions.[1] Primarily it is employed to bar the Negro and certain other minority groups from most residential areas, and thus effectively limits the space and housing facilities in which these Americans may live.

Ironically, the restrictive covenants thrive—indeed they become possible—only where they do the most harm and work the greatest injustice. The effects of these covenants can be properly evaluated only if they are viewed against

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[1] Abrams, *Discriminatory Restrictive Covenants—A Challenge to the American Bar,* address before Bar Association of the City of New York, February 19, 1947, pp. 1-2.

the background of rapid urbanization of the Negro population—a process which began to gather momentum with the "Great Migration" of World War I. In Detroit, for example, the decade between 1910 and 1920 saw 35,000 Negroes pour into a city which previously had less than 6,000—an increase of 600 per cent. in ten years. This accelerated trend has continued ever since as the following table indicates:

Number and Per Cent of Negroes in the Total Population of Detroit, 1910-40.

	1910	1920	1930 [a]	1940 [b]
No. of Negroes	5,741	40,838	120,066	149,119
Per Cent of Total Population	1.2%	4.1%	7.7%	9.2%

[a] Source: Bureau of Census, Negroes in the United States, 1920-32, 1935, table 10, p. 55.
[b] Source: Bureau of the Census, 16th Census, 1940.

This pattern is by no means peculiar to Detroit but is typical of all of the large urban areas in the North.[2]

World War II occasioned another major movement of Negroes to Detroit, the volume of which can best be comprehended by considering the whole Detroit metropolitan area rather than the city proper. This development, as reflected by the data for non-whites (of whom over 95 per cent were Negroes), is shown in the following table:

Number and Per Cent of Non-white Resident in Detroit Metropolitan Area, 1940 and 1947.[a]

	1940	1947
No. of non-whites	171,877	348,245
Per Cent of non-whites	7%	13%

[a] Source: Bureau of the Census, Current Population Reports, Population Characteristics, Series P. 21, 1947.

[2] Bureau of Census—Negroes in the United States, 1920-32, 1935, table 10, page 55.

The recent war also occasioned the movement of an unprecedented number of Negroes to the West Coast. In Los Angeles, the Negro population increased 108.7 per cent from 1940 to 1946 [3] and in San Francisco, 560.4 per cent from 1940 to 1945.[4]

With each new wave of Negro migration into the cities of the North, restrictive covenants hemming them into limited areas of living, became more and more extensive.[5] As the colored population grew, the supply of shelter diminished. In the metropolitan district of Detroit, for example, the non-white population, which constituted seven per cent of the total in 1940, occupied seven per cent of the dwelling units in the area.[6] By 1947, non-whites were 13 per cent. of the residents in the metropolitan district but they occupied only 11 per cent of the dwelling units. In other cities, including Chicago, Los Angeles, Washington, Baltimore, Toledo and Columbus, where racial covenants are prevalent, non-whites similarly failed to get a numerical share of existing housing proportionate to their percentage in the total population.[7]

While some individuals in most migrant groups found escape from the slum and blighted areas as they improved

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[3] Special Census, Race, Sex by Census Tract, U. S. Census as of Jan. 28, 1946.

[4] Special Census, Race, Sex by Census Tract, U. S. Census as of Aug. 1, 1945.

[5] Weaver, *Race Restrictive Housing Covenants,* Journal of Land and Public Utility Economics, Aug., 1944, p. 185.

[6] It should be noted that the term "dwelling unit" has a different meaning when applied to housing occupied by white and by colored people. Because of the high incidence of improvised conversions, and great overcrowding in the Black Belt a dwelling unit there is often no more than a single room.

[7] See chart entitled "Total Population, Non-White Population, Percentage of Non-White * * * in Selected Northern and Border Metropolitan Districts, 1940 and 1947" in Appendix A, p. 92.

their economic and cultural status,[8] the degree of concentration of Negroes has increased with the passing of time.[9] Spatial separation of ethnic groups, which was temporary for European immigrants and native white migrants, became permanent for colored Americans. For the latter group this separation was no longer occasioned by economic forces alone. Residential segregation was not a voluntary matter for Negroes; it was enforced. A new and distinctly American ghetto was developing, and race restrictive covenants, enforced by the courts, were the principal instrument in institutionalizing this pattern in American cities.

In this situation, only two things could possibly happen. Either the Black Belt could attempt to absorb more inhabitants or the areas available to Negroes could expand. The prevalence and enforcement of restrictive covenants sharply reduced the possibilities of expansion and free movement of Negro families regardless of their income or cultural level, thereby intensifying the overcrowding of already densely populated Negro ghettos. This resulted in an alarming decline in the living standards of a large segment of our population.

(a) *Overcrowding*

The accepted standard by which the housing experts measure overcrowding in dwellings is the relationship between the number of persons and the number of rooms. A

[8] The President's Conference on Home Building and House Ownership, *Report of Committee on Negro Housing,* Negro Housing, 1932, p. 5; Park, Burgess and McKenzie, *The City,* University of Chicago Press, 1925, pp. 47-79; Burgess, *Residential Segregation in American Cities,* Annals of the American Academy of Social and Political Science, November, 1928, pp. 108-12; Cressey, *The Succession of Cultural Groups in the City of Chicago,* University of Chicago, 1930 (A Ph.D. thesis in the Development of Sociology, pp. 58-9; 84-94, tables VI, VIII and X.

[9] Cressey, *op. cit.,* p. 94, table XI.

dwelling is regarded as overcrowded when there are fewer rooms than there are persons to live in them.[10] Measured by this definition, 27 per cent of all housing occupied by Negroes in the City of Detroit was overcrowded in 1944.[11] Similarly, it is reported that in 1940, 24.8 per cent of all dwelling units occupied by non-whites contained six or more persons.[12] It has been reliably estimated that if all Negro families in Detroit in 1946 had been safely housed (and here the very conservative average of four persons per occupied dwelling unit was used as a standard), an additional 19,000 dwellings for Negro occupancy would have been required over and above the 35,000 in existence in 1940.[13]

The same situation of extreme density of population is found in most of the other Northern urban centers.[14] In 1943 density in the heart of the Chicago Black Belt had reached 80,000 persons per square mile, so that into an area

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[10] Edith Elmer Wood, INTRODUCTION TO HOUSING, U. S. H. A. Washington, 1939, p. 36.

[11] THE PEOPLE OF DETROIT, Master Plan Reports, Detroit City Planning Commission 1946, p. 19. Of the overcrowded dwelling units occupied by Negroes in Detroit, 9.2 per cent (as compared to 3.4 per cent of the total number of dwelling units) showed a ratio of more than 1.5 persons per room.

[12] Table 9, HOUSING—GENERAL CHARACTERISTICS, Michigan, 16th Census of the United States, 1940.

[13] *People of Detroit,* ibid, footnote 11.

[14] Per Cent of Total Dwelling Units With From 0.5 to 2 or More Persons Per Room, in the North and West, 1940[a]:

No. of persons per room	Urban North		Urban West	
	White	Non-White	White	Non-White
0.5 or less	32.8	25.4	35.3	27.7
0.51 to 1.00	53.7	49.3	53.0	49.7
1.01 to 1.50	9.7	14.4	7.2	11.9
1.51 to 2.00	3.1	8.0	3.2	7.3
2.01 or more	0.7	2.9	1.4	3.3

[a] Source: *Housing, Vol. II, Part I,* table 4, 16th Census of the United States.

of only 7½ square miles there were compressed 300,000 colored Americans.[15] In a sample study conducted in Chicago in 1944, it was found that 4.4% of the city's dwelling units were occupied by more than 1.5 persons per room, whereas in an area (exclusively inhabitated by Negroes) more than one-third of the dwelling units were so occupied. The 75 structures in this sample area were designed—or more accurately, converted—to house 135 families, but at the date of inspection were occupied by more than two and one-half times that number.[16]

The following chart showing the relative incidence of overcrowding in white and Negro neighborhoods in a few other cities in 1945 follows the same pattern:

Per Cent of Tenant Occupied Dwelling Units With More Than 1.5 Persons Per Room, by Race, 1945 [a]

	White	*Negro*
Cincinnati	6.9	15.3
Cleveland	1.9	8.7
St. Louis	5.1	20.2
Indianapolis	3.0	7.0

[a] Source: Special surveys of Census Bureau and Bureau of Labor Statistics.

With respect to our Nation's Capital, the information contained in the brief submitted to this Court by the Petitioners in the cases of *Urciola* v. *Hodge* and *Hurd* v. *Hodge,* shows most graphically the same appalling condition of overcrowding in the Negro areas of Washington.[17]

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[15] Cayton, HOUSING FOR NEGROES, Chicago *Sun,* Dec. 13, 1943.

[16] THE SLUM . . . IS REHABILITATION POSSIBLE? The Chicago Housing Authority, 1946, p. 15. (The area chosen was picked as representative of Negro slum conditions, neither the best nor the worst block in the Black Belt.)

[17] *Hurd* v. *Hodge et al.,* No. 290, October Term, 1947; *Urciola et al.* v. *Hodge et al.,* No. 291, October Term, 1947.

The immediate effect of the enforcement of restrictive covenants is abundantly clear from the statistical evidence. Because Negroes have been unable to exercise their civil right to move freely to new living quarters, the Black Ghettos have become increasingly and dangerously overcrowded.

(b) *Conditions of Dwellings*

It is a corollary of overcrowded housing that the conditions of living inevitably fall far below the standards of safety and health which every citizen has reason to expect. The continuous process by which thousands of new Negro migrants arrive annually in the Black Belts of our Northern cities results in a perpetual deterioration in the living conditions of these people. The impact upon the Negro has been disproportionately severe. He pays higher rentals for inferior dwellings [18]—inferior to the point of endangering the lives and well-being of himself and his children. Because of the discrimination practiced through restrictive covenants, only a small portion of the total housing supply is opened to the Negro and the opportunity of improving his status, with respect to the barest necessities of living, is cut off in deference to the "private agreement" of his white neighbors.

Viewing the condition of dwellings upon a nation-wide basis, it will be seen from the 1940 Census that 83 per cent of the dwellings occupied by Negroes were in need of major repairs or contained plumbing deficiencies. The comparable figure for white dwellings was 45 per cent. Twenty-six per cent of the dwellings occupied by non-whites which needed major repairs were without running water (9.2 was

[18] Robinson, RELATION BETWEEN CONDITION OF DWELLINGS AND RENTALS, BY RACE, Journal of Land and Public Utility Economics, August, 1946, pp. 299-302.

the ratio in white dwellings). In those non-white dwellings which did not require major repairs, 35.5 per cent were without running water as compared to 17.4 per cent of the white dwellings. While 59 per cent of all dwelling units occupied by whites had private baths and toilets, these necessities were found in only 20.5 per cent of non-white dwellings.[19]

In the North and West, where there was less differential in Negro and white incomes than in the South, the racial differential in the quality of housing was outstanding, as is shown in the following table.

State of Repair and Plumbing Equipment for Occupied Dwelling Units in the North and West, by Race, 1940 [a]

Per Cent of Total Units for Each Group

The North	Total	Whites	Non-Whites
Needing major repairs or with plumbing deficiencies	24.9	23.5	52.1
With plumbing deficiencies but not needing major repairs ..	14.8	14.2	25.8
Needing major repairs	10.1	9.3	26.3
The West			
Needing major repairs or with plumbing deficiencies	20.1	19.6	36.9
With plumbing deficiencies, but not needing major repairs ..	11.2	11.0	18.6
Needing major repairs	8.9	8.6	18.3

[a] Source: *Housing, Volume II, General Characteristics, Part I, United States Summary,* 16th Census of the United States, tables 6b and 6c.

The condition of dwelling units among whites and non-whites in the City of Detroit is graphically portrayed in a

[19] Housing, Volume II, General Characteristics, Part I, United States Summary, 16th Census of the United States, 1940.

recent report of the Bureau of The Census of the United States Department of Commerce. The higher incidence of substandard [20] dwellings among non-whites is apparent from the following chart drawn from this Census report:

A Comparison of the Condition of Dwelling Units in The City of Detroit, 1947 [a]

	White	Non-White	
	Per cent	Number	Per cent
Substandard	9%	26,269	31%
Needing major repairs	3%	21,208	25%
Lacking private bath	1%	6,266	8%
Lacking private toilet	5%	5,784	7%
No running water in unit	1%	1,687	2%

[a] Source: Current Population Reports, Housing, Characteristics of Detroit, Michigan, April, 1947, Bureau of the Census, Series P/71, No. 19.

Of all of the substandard units in Detroit, those occupied by non-whites accounted for 33 per cent. This is to be contrasted with the fact that the non-whites occupy only 11 per cent of all currently occupied units in the city.

In the heart of the Negro areas of Detroit, the conditions are even more deplorable. In census Area K, which includes the so-called "Black Bottom" and "Paradise Valley" slums in which it is estimated 203,000 Negroes are forced to live, sanitary engineers who recently checked the area found that between 90 and 95 per cent of all houses were substandard.[21]

[20] Substandard is used herein to designate a dwelling needing major repairs or lacking private bath, toilet or running water.

[21] Velie, *Housing: Detroit's Time Bomb*, COLLIER'S, November 23, 1946, p. 77.

A recent study of sixteen Northern and Western cities, including Detroit, revealed that while only 16.5 per cent of the white units were substandard (*i. e.* needing major repairs or with plumbing deficiencies), 44.9 per cent of the non-white units were deemed to be substandard.[22]

> This analyst finds: "analysis of the relationship between the condition of dwellings and rental value for units occupied by white families and those occupied by non-white families reveals that the non-white group receives proportionately more substandard housing than does the white group for the same rent or rental value.[23]
>
> "The differentials revealed in this analysis may be imputed to the effect of residential racial restrictions. This is supported by the fact that the proportionate differentials between the two racial groups are greatest in the higher rental value brackets where racial restrictive practices operate to maintain a highly discriminatory market, and in the Northern and Western cities where the in migration of non-whites from the South has accentuated racial restrictive practices and greatly accelerated the market in the constricted areas to which the non-white group is arbitrarily confined."[24]

The following comparison between two sample blocks in the City of Detroit is also revealing. The first block is occupied exclusively by Negroes; the second exclusively by whites. Although the rent of both of these blocks was almost identical, the disparity of condition, density of population, and age of dwellings is great.

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[22] Robinson, *Relation Between Condition of Dwelling and Rentals by Race,* The Journal of Land and Public Utility Economics, Volume XXII, No. 3, October, 1946, p. 297.

[23] Ibid., p. 298.

[24] Ibid., p. 302.

Characteristics of a Sample Negro-Occupied and a Sample White-Occupied Block in Detroit, 1940 [a]

	Block No. 14, Census Tract 537 (Negro occupied)	Block No. 15, Census Tract 566 (White occupied)
Average Monthly Rental	$23.41	$23.61
No. Dwelling units per structure (approximate)	3	1
Per cent Dwelling units built before 1900	2.3	0
Per cent Dwelling units built before 1900 and 1919	86.3	23.8
Per cent Dwelling units built between 1920 and 1929	11.4	76.2
Per cent Dwelling units needing major repairs or lacking private bath facilities	97.0	10.7
Per cent Dwelling units with more than 1.5 persons per room	8.9	5.4

[a] Source: United States Census, Housing Supplement, Block Statistics, Detroit, March, 1940.

It is apparent from these official statistics that the compression of one racial group within strict geographical boundaries has overcrowded the inhabitants beyond endurance. It is equally clear that in those cities which represent the highest technological development of our civilization, a large and important segment of our population lives in unparalleled squalor. These are the immediate effects of restrictive covenants and the sanction given to them.

2. The Results of Slum Conditions in Negro Housing.

The restrictive covenant is the instrument by which the normal expansion of living facilities available to Negroes has been made impossible. The needs of Negroes have not

been met by new housing since a large proportion of this housing is covered by racial covenants,[25] and the areas occupied by colored Americans have been surrounded by racial covenants, public facilities, or economic and industrial property. Thus, the supply of available shelter has never caught up with the demand. The poorly housed have become more poorly housed. The Black Belt in every city has become a slum—the ultimate in the degeneration of the American dwelling place.

The results of these conditions in terms of public welfare and community life are amply documented by public record. This Court may take notice of the higher incidence of disease, crime, vice, and violence in unhealthy and deplorable living areas. It is here proposed to set out in summary form some of the observations and conclusions of experts in these special social fields with particular reference to the conditions existing in the Negro ghetto.

The chain of causation is apparent; these are the effects, once removed, of the judicial sanction which the courts have given to race restrictive covenants. There are the products of enforced residential segregation.

a. The Effect of Residential Segregation on Health.

It has been demonstrated above that residential segregation inevitably forces the segregated group into blighted and overcrowded areas. These conditions in themselves create a serious health hazard regardless of the economic status of the segregated group. Authorities in the field of

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[25] A recent summary demonstrated that in 315 subdivisions opened in the last 10 years in Queens, Nassau and Southern Westchester (New York) over half the dwelling units were covered by racial covenants. See Architectural Forum, October, 1947, p. 16.

public health and public housing are agreed that bad housing has a direct and disastrous result upon health.[26]

Frequent contact of large numbers of individuals in a restricted area cause significant increases in respiratory diseases.[27] This is demonstrated by the high mortality rates resulting from tuberculosis, pneumonia, influenza and the common communicable diseases of childhood in overcrowded areas.[28]

The unsanitary condition and general dilapidation of houses in blighted areas present another serious health hazard. More graphically these hazards consist of inadequate and filthy toilet facilities, rat and vermin infestation, dampness, lack of heat and sunlight. These result in a high incidence of diarrheal and digestive ailments. For example, typhoid fever was 100% more frequent in slums; indigestion

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[26] W. J. Smillie, Preventive Medicine and Public Health (The MacMillan Company, New York, 1946); "Basic Principles of Healthful Housing," Committee on Hygiene of Housing of the American Public Health Association; C. E. A. Winslow, Housing for Health (The Milbank Foundation, 1941).

[27] Britton, *New Light on the Relation of Housing to Health*, 32 American Journal of Public Health 193 (1942).

[28] Thus:

> The secondary attack rate for tuberculosis is 200% greater for relief families living in overcrowded housing than for all income groups living with less than one person per room.
>
> (Britton, *op. cit.*)
>
> The argument that Negroes have a higher susceptibility to tuberculosis is offset by an analysis of the tuberculosis rate in both Negro and white slum areas, showing that both have a highly excessive incidence of the disease.
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> ("Report on Housing," Chicago, Cook County Health Survey; "Health Data Book for the City of Chicago"; U. S. Census, 1940); Britton & Altman, "Illness and Accidents among Persons Living under Different Housing Conditions," 56 Public Health Reports 609 (1941).

and stomach ailments 75% more frequent; diarrhea, enteritis and colitis 40% higher. These relationships hold even if the economic factors were taken into account.[29] These conditions also resulted in a high incidence of rheumatic fever, the most common cause of heart disease among individuals under 45.[30]

The infant mortality rate is the most sensitive single index of health and progress. If such an index of social conscience and progress is applied to the Negro people, it is seen that they are excluded from the benefits of the American way of life.

> "City-born babies, and those born in the towns, have a slight edge on babies born in the country, in their chance for survival. That comparison holds true *only for white children* however; in the nonwhite group, which is mostly Negro, those born in the rural areas have a better chance than those in the urban areas, though still not anywhere near as good a chance as the white child in either city or country. The reason may be that the conditions under which Negroes must live in the cities and towns represent a hazard for babies that outweigh other factors, such as more and better medical care and access to hospitals, that tend to give the city born child the advantage."[32]

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[29] Britton and Altman, *Illness and Accidents Among Persons Living Under Different Housing Conditions,* 56 Public Health Reports 609 (1941).

[30] Paul, *The Epidemeology of Rheumatic Fever and Some of Its Public Health Aspects,* Metropolitan Life Insurance Co., 1943; Wedum and Wedum, *Rheumatic Fever in Cincinnati in Relation to Rentals, Crowding, Density of Population and Negroes,* 34 American Journal of Public Health 1065 (1945).

[32] "Our Nation's Children," No. 8, August, 1947, Federal Security Agency, U. S. Children's Bureau.

This statement is given grim reality by the tragic pattern of Negro infant mortality rates which are 65% higher than for white babies in all areas of the United States.[33]

Despite the increased use of hospitals for child birth throughout the cities of the United States, two or three times as many Negro mothers die in child birth as white mothers.[34]

The City of Detroit presents no variation in the nation-wide picture of the relation between residential segregation and the high incidence of disease. Thus, the mortality rate per 100,000 from tuberculosis in that city was 36.5 for whites and 189.0 for Negroes during the period from 1939-1941.[35] For pneumonia, the death rate for Negroes is 71.5 per 100,000, for whites 23.3 per 100,000. The infant mortality rate for Negroes is 49.8 per thousand, compared with 28.0 per thousand for whites.

In terms of citizenship, the psychological evils flowing from segregated housing are equally as important to society as the physical health hazards discussed above. Draft rejection rates in the Second World War for personality disorders increased significantly in slum and overcrowded areas.[36] Furthermore, Negro draftees had the highest rates

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[33] Gover, *Negro Mortality; II The Birth Rate and Infant and Maternal Mortalities,* 61 Public Health Reports 43 (1946). In New York City with the most progressive health department in the country, the Negro mortality rate is 50% higher than the white rate. Vital Statistics, New York City Health Department, 1946.

[34] Ibid.

[35] *Mortality from Tuberculosis, White and Non-white for Selected Cities of 100,000 and Over—1939-41,* Tuberculosis in the United States by National Tuberculosis Association and the U. S. Public Health Service, 1945.

[36] A study of Washington, D. C. draft rejection rates is found in Hadley, et al. *Medical Psychiatry; an Ecological Note,* VII Psychiatry 379 (1944), and a study of Boston and surrounding areas is found in Hyde & Kingley, *Studies in Medical Sociology: The Relation of Mental Disorders to Population Density,* 77 N. E. Journal of Medicine 571 (1944).

for both psychoneurosis and psychopathy among national and ethnic groups, a factor explained in the studies as related to "the intensity and severity of stress to which many of the Negroes are subjected."[37]

> "The most all-pervading sense of frustration that literally engulfs the Negro people in their caste relationship to the majority group and the mechanisms of segregation and discrimination that are its attendant counterparts. * * * Caste is meant to refer to systems of privilege and the limiting of spontaneous participation in the culture of which the Negro people are a part.
>
> "The typical American town has its black ghetto—almost always situated on the other side of the track. It is difficult to stay there and more difficult to leave. Overcrowding and congestion become commonplace. Individual privacy and respect for it disappears."[38]

In a study of mental disorders in urban areas it was demonstrated that social communication between population groups was essential to healthy mental development, and that social isolation of a given group led to increased mental breakdown among its members.[39]

> "Bad housing, with its resultant overcrowding, filth, lack of personal and family privacy, its noises, its odors and its dark and dirty corners, breaks down family morale and has a profound and evil influence upon the happiness, welfare and health of the people."[40]

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[37] Hyde & Chisholm, *Relation of Mental Disorders to Race and Nationality,* 77 N. E. Journal of Medicine 612 (1944).

[38] Cooper, *The Frustration of Being a Member of a Minority Group,* 29 Mental Hygiene 189 (1945).

[39] Farris & Dunham, *Mental Disorders in Urban Areas: An Ecological Study of Schizophrenia and Other Psychoses,* U. of Chicago Press, 1939.

[40] Smillie, *op cit.*

In human terms, substandard housing means serious interference with the emotional, mental and family life of the individual:

> "The Committee on the Hygiene of Housing has correctly pointed out that more damage is done to the health of the children of the United States by a sense of chronic inferiority due to the consciousness of living in substandard dwellings than by all the defective plumbing which those dwellings may contain." [41]

b. Cost of Residential Segregation to the Community as a Whole.

Municipal services rendered in slum areas cost far more than the revenue collected.[42] The Federal Works Agency has summarized the situation in metropolitan centers. It found that although slums and blighted areas comprised but 20 per cent of the residential area of the larger cities of the nation in 1940, they housed a third of the people in these cities. While these districts provided only six per cent of the municipal revenue from real estate taxes, they absorbed 45 per cent of the service costs which municipalities had to render.[43] Translated into dollars and cents, this means that

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[41] C. E. A. Winslow: *Housing for Health* (The Milbank Foundation, 1941); see also *Basic Principles of Healthful Housing,* supra.

[42] There are many studies that reflect this fact. One of the pioneering surveys is contained in Edith Elmer Wood, *Slums and Blighted Areas in the United States,* U. S. Government Printing Office, 1935. Other more recent summaries are available: See, *Urban Housing,* Federal Emergency Administration of Public Works, 1937, pp. 8-10; Mabel L. Walker, *Urban Blight and Slums,* Harvard University Press, 1938, pp. 36-63, 68-72; and statement of John B. Blandford, Jr., at Hearings before the Subcommittee on Housing and Urban Redevelopment of the Senate, 79th Congress, 1st Session, Part 6, January 9, 1945, pp. 1233-7.

[43] *Postwar Urban Development,* Federal Works Agency, 1944.

a medium-sized city, such as Newark, New Jersey, spends fourteen million dollars a year maintaining its slums.[44]

The total real estate taxes collected from a restricted group are less than they would be if the group were free to acquire and live in properties which carry higher assessments and yield greater tax revenues. These latter situations increase the tax burden of the rest of the community.

As long as there was only a small proportion and number of colored people with medium and high incomes, the loss in city revenue was small.[45] Changes in the occupational color system occasioned by the war and continuing somewhat in the peace, have altered the picture.[46] Today in the larger industrial centers there is an appreciable number of colored families which can pay their way in housing and taxes. So long as they are relegated to slums or contiguous blighted areas, only a small proportion of them pay as high taxes as they would were they able to secure attractive housing in desirable neighborhoods. The result is a loss in city revenue at the same time that the total population in the subsidized areas of the city is increased.

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[44] Rumney and Shuman, *The Cost of Slums In Newark,* Housing Authority of the City of Newark, second printing 1946, p. 15. "We believe that part of this cost would remain even if these areas were rehabilitated, for most residential areas require more in expenditures than they yield in revenues. * * * But certain reductions could be made in the cost of servicing low-income families despite their poverty by eliminating slums" (Ibid., p. 16).

[45] There were, of course, other economic costs most of which penalized the minority groups subjected to ghetto living. "Segregation has little effect on the great bulk of poor Negroes except to overcrowd them and increase housing costs, since their poverty and common needs would separate them voluntarily from whites, just as any European immigrant group is separated. * * * The socially more serious effect of having segregation, however, is not to force this tiny group of middle and upper class Negroes to live among their own group, but to lay the Negro masses open to exploitation and to drive down their housing standard even below what otherwise would be economically possible" (Myrdal, *op. cit.,* p. 625).

[46] Weaver, *Negro Labor: A National Problem,* 1946, Parts 1 and 2.

"Unsolved, the Negro housing dilemma costs Detroit heavily in other ways than jittery nerves. Badly in need of a medical center, express highways, parks and other deferred civic improvements, Detroit must wait indefinitely for them. The land they will occupy now houses hundreds of Negro families who can't be evicted because there's no place for them to go." [47]

Privately financed and publicly financed housing presents problems in every American city. Political pressures and litigation will increasingly challenge federal, state and local aid to housing if it fails to offer equitable participation to minorities. Since private enterprise has repeatedly claimed, in its opposition to public housing, that it can offer decent shelter for all groups as well as public housing in the population, it will have to face the problem of opening more space to colored people.[48]

So pressing is this matter that housing agencies are beginning to study and analyze it, since they recognize that the costs of residential segregation are as great if not greater for city planning and urban redevelopment than for the minorities already restricted to inadequate areas.

> "One thing seems clear. In most big cities any housing, city planning or race relations program that does not open up more land on which Negroes may live is ineffectual. Any policy which results in a net reduction either in land or houses available to Negroes is a social menace. Every program to date, low-rent housing, war housing, and now housing for veterans has run up against this problem in one form or another and been partly or wholly stymied by it.

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[47] Velie, *Housing: Detroit's Time Bomb,* Colliers, November 23, 1946, p. 5.

[48] Weaver, *Planning for More Flexible Land Use,* Journal of Land and Public Utility Economics, February, 1947, p. 32.

And there is hardly any current urban redevelopment proposal that should not be carefully scrutinized from this point of view."[49]

c. Racial Residential Segregation Causes Segregation in All Aspects of Life and Increases Group Tensions and Mob Violence.

Even a superficial study of crime, juvenile delinquency and health statistics shows that these are indications of social instability greatly aggravated by poor housing and overcrowding. Thus in Detroit, the total slum areas yielded five times as many crimes, and fifteen times as many criminals as a "normal residential area."[50] Since in 1947 Negroes occupied one-third of the total number of substandard units in Detroit, and those units housed a tremendous percentage of the total Negro population, it would be fallacious to conclude that Negroes are undesirable. The Detroit City Planning Commission concludes from these facts that where dependency, crime and juvenile delinquency "are concentrated in special areas, they are evidence that the environment contributes to social pathology."[51]

Faced with the responsibility of raising a family, the Negro like any other human being, seeks to escape the consequence of ghetto life and establish a home away from the environment which results in these personal and social tragedies. "He has no other alternative if he would improve his housing situation, than to seek it in less densely

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[49] *Race Relations in Housing Policy,* National Public Housing Conference, 1946, p. 4.

[50] *Housing Facts,* National Housing Agency, Washington, D. C., Jan., 1946, p. 21. The same study showed that slum areas in Cleveland were responsible for 4 per cent of larcenies, 5.7 per cent of robberies, 7.8 per cent of juvenile delinquency, 10.4 per cent of illegitimate births and 21.3 per cent of murders, while housing only 2.47 per cent of the City's population.

[51] *The People of Detroit,* Detroit Planning Commission, 1946, p. 30.

settled areas which are inhabited by whites.'' [52] It is at this point that the Negro's normal desire for self improvements meets organized and judicially sanctioned opposition.

Of all the devices to effect residential segregation, restrictive covenants are the most ''respectable,'' and yet the consequences are the most lasting and harmful. Covenants are promoted by skillful propagandists of race hatred; they reach and involve in anti-Negro activity large groups of citizens who normally opposed violent racism but who participate in this activity because it is something ''lawful,'' and hence worthy of their support.[53] Since upper-income groups champion and sign race restrictive housing covenants, other groups, less able financially to develop similar instruments, resort to less formal but equally effective means of excluding minorities. As long as the ''better people'' in a community sign restrictions against certain groups and the courts enforce such agreements, other elements will ''protect'' their neighborhoods against minorities too.

> ''Racial segregation in residential areas provides the basic structure for other forms of institutional segregation.'' [55]

It is recognized by authorities in city planning that the basis for public services and institutions is the neighbor-

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[52] *The Police and Minority Groups,* Chicago Park District, 1947, p. 67.

[53] For a documentary account of the atrocities of the promoters of racial covenants see President's Annual Report (for 1944); Oakland Kenwood Property Owners Association (Chicago) 1945; *Restrictive Covenants,* The Federation of Neighborhood Associations, Chicago, 1944.

[55] Charles Johnson, *Patterns of Negro Segregation* (1943), p. 8.

hood, rather than the city.[56] From the segregated neighborhood grow segregated schools, health and welfare services and innumerable "Negro" institutions in areas of our country where segregation as a way of life is legally rejected.[57]

In the course of expansion of the ghetto, many second-hand public and semi-private institutions are turned over to Negro use. Thus, regardless of laws banning racial segregation in public facilities, the enforced residential segregation of Negroes makes the large majority of these facilities as completely segregated in Northern cities as in the South, where segregation is fixed by statute.

Consequently, although many states in the North have specific constitutional or statutory prohibitions against segregation in public schools, where there are definable Negro neighborhoods, effective educational segregation is maintained.

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[56] The Detroit City Planning Commission has stated:

"The distribution of people within the city and region affects directly the need for public and private facilities. Schools, parks, utilities, shopping facilities, highways and transit must be located where people can use them, whether they happen to be inside or outside a given political boundary.

"The optimum population has been estimated for each neighborhood on an assumption that land will be made available for schools, neighborhood recreation and other community facilities in accordance with accepted standards." Source: *The People of Detroit, Detroit City Planning Commission* (1946), p. 23.

[57] Loren Miller, *Covenants for Exclusion,* Survey Graphic, Oct., 1947, p. 558.

Myrdal observes that in many northern states:

> "* * * there is partial segregation on a voluntary basis, caused by residential segregation aided by the gerrymandering of school districts. * * *"[58]

Other public facilities are similarly segregated because of the residential location of the population they serve.[62]

Because of residential segregation, there are created Negro political districts and the political exploitation of racist issues comes easily in such communities. General interest in the over-all problems of democratic government are stifled and divisive racial "blocs" are fostered.

The Detroit City Planning Commission has been seriously concerned with the need for better integration of Negroes into the life of the City. Thus it states:

> "The people are barred from full participation in the general life of the community both by restrictions from living in many desirable residential neighborhoods and by exclusion from social, religious and other groups. To the extent that they are compelled to form their own clubs, churches and business associations, they will undoubtedly remain a group with strong feelings of racial identity and minority status."[63]

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[58] Myrdal, An American Dilemma, 1944, p. 632. A recent study of Negro life in Evanston, Illinois, established that most of the Negro population lived in the Northern section of town, and that a zoning arrangement for school attendance, applicable only to that section, effectively confined Negro children to a segregated school. Economic and Cultural Problems in Evanston, Illinois, as They Relate to the Colored Population, *National Urban League,* Feb., 1945, pp. 56-58. High School students in Los Angeles, Gary and Chicago have staged strikes in the past two years when Negro children were admitted to what the white students had come to regard as "white" schools.

[62] For description of the process of handing down health facilities and the evils attendant upon segregated medical care, see W. Montague Cobb, "Medical Care and the Plight of the Negro," *Crisis,* July, 1947, pp. 201-211.

[63] *The People of Detroit,* Detroit Planning Commission, 1946, p. 34.

Enforced residential separation and resultant patterns of segregation in other phases of American life reflect a staggering human toll:

> "The * * * pathological features of the Negro community is of a more general character and grows out of the fact that the Negro is kept behind the walls of segregation and is in an artificial situation in which inferior standards of excellance or efficiency are set up. Since the Negro is not required to compete in the larger world and to assume its responsibilities, he does not have an opportunity to mature."[64]

The inevitable result of housing segregation is to perpetuate prejudice and heighten group tension.

> "As long as Negroes are relegated * * * to physically undesirable areas * * * they are associated with blight. The occupants of the black belt are all believed to be undesirable * * * and their perpetual and universal banishment to the ghetto is defended on the basis of imputed racial characteristics."[65]

Racial covenants, once having been imposed upon a neighborhood, give concrete substance and perpetuation to latent opposition to Negroes. The Chicago police say that the restrictive covenant wall binding the ghetto creates areas of tension and conflict requiring special policing.[66] Many analyses of racial conflicts have indicated that the ghetto provides a fertile ground for seeds of racial tension, which erupt into open conflict and riot. "Since the very existence of segregation results in diminished intergroup

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[64] E. Franklin Frazier, "Negro Youth at the Crossways," 1940, p. 290.

[65] Weaver, *Chicago, A City of Covenants,* Crisis, March, 1946.

[66] *The Police and Minority Groups,* Chicago Park District, 1947, pp. 64-69—section dealing with residential segregation as a source of group tension.

contact, prejudiced attitudes grow stronger and segregation gains increasing popular acceptance."[67]

Living reality was given to the assertion that inter-group contact diminishes race tension and conflict by the Detroit race riot of 1944. In the areas of mixed racial residence no conflict was reported, and in the factories and shops where Negroes worked side by side, there was reported not a single instance of conflict.[68]

B. *There Are No Economic Justifications for Restrictive Covenants Against Negroes. Real Property Is Not Destroyed or Depreciated Solely by Reason of Negro Occupancy and Large Segments of the Negro Population Can Afford to Live in Areas From Which They Are Barred Solely by Such Covenants. The Sole Reason for the Enforcement of Covenants Are Racial Prejudice and the Desire on the Part of Certain Operators to Exploit Financially the Artificial Barriers Created by Covenants.*

It has frequently been asserted that the racial restrictive covenant is no different in its social, economic and legal effect from the other restrictive provisions commonly found in deeds and conveyances. Thus, it is said that a grantor may reasonably and properly provide that under no circumstances shall his grantee utilize the property for industrial purposes, for purposes which create obnoxious noises or odors constituting a public nuisance, for purposes which may endanger life and limb, for purposes which contravene

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[67] Weaver, *Chicago, A City of Covenants,* Crisis, March, 1946, p. 18. See also B. T. McGraw, *"Wartime Employment, Migration and Housing of Negroes in the United States, 1941-44,"* National Housing Agency, Racial Relations Service Documents, Series A, No. 1, July, 1946.

[68] *What Caused the Detroit Riot,* National Association for the Advancement of Colored People, July, 1943.

the prevailing moral code or for other specific purposes calculated to lower the value of surrounding property in which the grantor may retain an interest. The proponents of this view imply that there are in each case economic or social justifications for the covenant imposed upon the person who receives the property.

Are there any such justifications for the racial restrictive covenants? Is it true, as has been loosely alleged, that the invasion of the Negro destroys the property? The evidence compiled by housing and real estate experts is conclusive to the contrary.

1. The Effect of Negro Occupancy Upon Real Property.

This is the conclusion of one analyst:

> "Already there is a body of evidence which indicates that Negroes with steady incomes who are given the opportunity to live in new and decent homes * * * instead of displaying any 'natural' characteristics to destroy better property have, if anything, reacted better towards these new environments than any other groups of similar income. Colored tenants have also displayed desirable rent-paying habits when housed in structures designed to meet their rent-paying ability. For 155 projects in 59 cities having two or more FPHA-aided projects, at least one of which is occupied by Negro tenants, the following results are reported: Collection losses do not exceed one per cent of the total operating incomes for a total of 142 of these projects, 72 of which are occupied by Negroes and 70 by white or other tenants. Five of the 13 projects showing rental losses in excess of one per cent are tenanted by Negroes and 8 are tenanted by whites or others. The collection loss records between the two racial groups do not differ more than

one per cent in 51 of the 59 cities, and the records are identical in 34.'' [69]

The National Association of Real Estate Boards recently undertook a survey of Negro housing and found that ''provision for good housing for Negroes can be carried out as a sound business operation and that the Negro family that rents good housing is usually a good economic risk.'' [70] Three-fourths of the local Boards which participated in the latter survey found no reason why large insurance companies would not freely purchase mortgages upon housing occupied by Negroes.[71]

This same survey asked realtors if they thought that Negroes were good economic risks and if Negroes did depreciate property. Their answers can be summarized as follows:

(1) Does the Negro make a good home buyer and carry through his purchase to completion? * * * 17 of 18 cities reported *yes.*

(2) Does he take as good care of property as other tenants of comparable status? * * * 11 of the 18 cities reported *yes.*

(3) Do you know of any reason why insurance companies should not purchase mortgages on property occupied by Negroes? * * * 14 of the 18 cities reported *no.*

(4) Do you think there is a good opportunity for realtors in the Negro housing field in your city? * * * 12 of the 18 cities reported *yes.*[72]

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[69] Weaver, Race Restrictive Housing Covenants, The Journal of Land and Public Utility Economics, Vol. XX, No. 3, August, 1944, p. 189.

[70] Press Release No. 78, National Association of Real Estate Boards, November 15, 1944.

[71] Ibid.

[72] Ibid.

There is no inevitable causal connection between race and dwelling conditions. In Washington, D. C., a small number of colored families moved about 50 years ago into Brookland, a desirable suburban section of the City. Most of them were Government employees and had stable and respectable incomes. Just prior to the recent war, many new homes were built in the area by Negroes at a cost of from $7,500 to $25,000. These houses are better designed and constructed than most of the existing dwellings in the neighborhood and their occupants are of a higher educational and cultural level than the majority of their white neighbors. The property values in Brookland have increased not only in the Negro community, but also in the contiguous white areas.[73]

Another such model community can be found in middle-class Westchester County of New York State.[74] New York City also contains persuasive evidence that the color of the skin of the tenants is not the determining factor in the rise of standard of dwelling conditions:

> "Closest approach to satisfactory housing for Negroes in New York's five boroughs, according to William L. Carson, a realtor with long experience in the area, is the Williamsbridge section in the Bronx. Most wage earners, here, have incomes of $3,000-4,000 per annum, most are Civil Service employees, many own their own homes, although some are rental tenants. Although seriously affected by the housing shortage, the Williamsbridge community has uniformly higher standards of dwelling conditions than are to be found in overall surveys of the other colored centers. The result is a total absence of hoodlumism, buildings kept in good condition, no evidence of slums (present or future) and a general

[73] Weaver, *Race Restrictive Housing Covenants,* The Journal of Land and Public Utility Economics, Vol. XX, No. 3, Aug., 1944, p. 191.
[74] Mummy and Phillips, *Negroes as Neighbors,* Common Sense, April, 1944, p. 134.

> standard of living not much below that of average white families of comparable income."[75]

A similar comparison was made recently in Philadelphia, where a section recently entered by colored people was selected for study and the selling prices before and after Negro occupancy were computed in a single block. The conclusion, as reported in an article entitled "Colored Occupancy Raises Values," was as follows:

> "The average sales price for the standard property in average condition, before colored occupancy was between $2,800 and $3,200. Today (September 1945) about six months after the first colored occupancy purchases, the average value for the same property is $4,500 to $5,000, with exceptional houses selling up to $5,500 and $6,000.[76]
>
> * * * * * * * *
>
> "If we trace the development of the newer colored neighborhoods, we will find that as a new section opens up closer to the suburban section, the better-educated and higher-income group colored move there from a less desirable section. * * * Thus, there is a gradual stepping up and development of the newer colored sections. This has all led to the increase in value in these sections and has stabilized all of these neighborhoods. As the process of colored expansion proceeds, the stepping-up process will continue to increase values in these newly developed colored sections."[77]

The origin of the fallacy that the presence of Negroes creates a decline in property values has its historical roots in the fact that Negroes are traditionally relegated to already deteriorated neighborhoods or live under such con-

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[75] THE URBAN NEGRO: FOCUS OF THE HOUSING CRISIS, November, 1945, p. 11.

[76] Beebler, COLOR OCCUPANCY RAISES VALUES, The Review of the Society of Residential Appraisers, Sept., 1945, p. 4.

[77] Ibid., p. 6.

ditions of overcrowding (due to restrictions) as to occasion physical decay of property. In Detroit, for example, most of the principal Negro area was built before 1919 and an appreciable part of it before 1900.[79]

The Philadelphia Chapter of the Society of Residential Appraisers and the Wharton School of Finance conducted a joint survey in 1939 and found that *no* houses occupied by Negroes in Philadelphia could be classified as being in good residential neighborhood:

> "By the time colored occupancy spreads to any neighborhood it is at least 30 years old and has the characteristics of physical and functional obsolescence that remove it from the category of a good neighborhood." [80]

Although it is often assumed because a particular neighborhood once housed the rich, that it was a first-class residential community when it was taken over by colored people, the evidence reveals, however, that in most instances the area had already been deserted by its original inhabitants and had started on the road to deterioration long before Negroes entered.[81]

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[79] HOUSING—ANALYTICAL MAP, Detroit, Michigan, 16th Census of the United States, 1940.

[80] Stern, "Long Range Effect Colored Occupancy," The Review of the Society of Residential Appraisers, January, 1945, p. 5.

[81] With respect to Chicago, see Cressey, supra, pp. 267-268; with respect to Harlem in New York City, see Kiser, SEA ISLAND TO CITY, Columbia University Press, 1932, pp. 19-20. This comment on the Harlem situation is also significant:

"Some have been foreclosed by the lending institutions as many as twelve times, resold for the full amount of the mortgage (for which a new mortgage is issued) and three to four thousand in cash. The new owner could readily perceive his inability to pay off a mortgage far greater than the value of his building; set about getting his original $3-4,000 back, plus whatever he could take before the bank again foreclosed on the property. To this end, he jacks rents to the limit, cuts operating and maintenance to the very bone."—THE URBAN NEGRO: FOCUS OF THE HOUSING CRISIS, Oct., 1945, p. 13.

One other objective factor in value depreciation has been noted by economists. Our building industry has generally deemed it expedient to concentrate on the upper-income group. Since there are not as many families in this group as in the middle and lower-income groups, "the oversupply of houses (in terms of capacity to pay, not in terms of need), must be absorbed by families whose income is lower than the income of families for whom houses were designed. This means a sizeable depreciation in value must take place." [82]

Available and valid data are cumulative confirmation of the proposition that when economic factors are kept constant, there are no noticeable differences in the quality of property maintenance, conditions of occupancy, and neighborhood standards on property values which can be directly traced to race.[83]

2. The Ability of Negroes to Pay for Better Housing.

It is also frequently asserted in support of racial restrictive covenants that few, if any, Negroes can afford to pay for decent housing. The restrictive covenant is therefore said to be nothing more than a formal crystallization of existing economic facts. It is argued that the Negro who can afford to move out of the Black Belt is so exceptional that a change in existing methods and procedures is not indicated.

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[82] Newcomb and Kyle, THE HOUSING CRISIS IN A FREE ECONOMY, Law and Contemporary Problems, Winter, 1947, p. 191.

[83] This is supported by the experience of the public housing program, the few desirable areas occupied by Negroes in cities such as Washington, Philadelphia, and New York and in the small number of well designed medium-rental housing projects available to Negroes —such as the Paul Lawrence Dunbar Apartments in New York City and the Michigan Boulevard Garden Apartments in Chicago.

This contention also fails to meet the test of analysis. In the first place, it should be noted that Negroes pay much higher rentals for the quarters which they currently occupy than do white persons in comparable units.[84]

Not only do Negroes pay more for desirable housing, as illustrated by the studies of Robinson and Beebler cited above, but they usually pay higher rents than whites for even the least desirable types of shelter. This has recently been substantiated for the City of Detroit:

> "In his crowded flat or room in blighted Black Bottom or Paradise Valley, the Negro pays 30 to 50 per cent more than whites pay for better quarters. A family jammed into a single room, sharing toilet facilities with six other families (the legal limit in Detroit is two, but is unenforced) will pay (in 1946) from $11 to $16 weekly or $47 to $69 per month. Before rent ceilings came, landlords tripled and quadrupled monthly incomes by evicting white families and renting to Negroes." [85]

Moreover, Negroes spend a larger proportion of their income for rent than white persons in the same income group. These facts are brought into sharp relief by the result of a study of housing in Chicago:

> "Negro residents of the Chicago 'black belt' pay as much per cubic foot per room as that paid by wealthy residents for equivalent space on Lakeside Drive." [86]

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[84] For a summary of earlier data supporting this statement, see, Thomas J. Woofter, NEGRO PROBLEMS IN CITIES, 1928, pp. 82-87, 121-30. More recent data are presented in Moron, *Where Shall They Live?*, The American City, April, 1942, and Beebler, *Color Occupancy Raises Values,* The Review of the Society of Residential Appraisers, September, 1945.

[85] Velie, *op. cit.* p. 75.

[86] Cayton, NEGRO HOUSING IN CHICAGO, *Social Action,* April 15, 1940, p. 18.

Whatever may have been the differential in earnings between Negroes and whites in the lower and middle income groups prior to World War II, the industrial effort in connection with the war tended to eradicate such differential. New and better paying jobs were open to Negroes, both men and women, and earnings in all job classifications were increased.[87] Consequently, great numbers of Negro workers and many Negro professional and business men and women who are dependent upon the Negro community, as well as those Negroes who recently have secured white collar and professional jobs in the larger economy are now able to pay for decent housing. Consequently the number of potential Negro purchasers and tenants of decent housing is greater than formerly.

The failure of housing to meet the needs of the Negro workers has been due not to the insufficient economic means of the applicant, but rather to the lack of building sites and the consequent inability of government agencies, to erect, or to effectively encourage private industry to build new housing for Negroes. The National Housing Authority, in order to meet the problem, threatened to withdraw priorities unless Negro housing was constructed, and as a result, realtors, builders and financial institutions suddenly "discovered" a new Negro market for housing. A typical statement of this new condition is contained in a monograph published by the National Housing Authority itself:

> "Current employment facts make evident an increasing number of Negroes in those income brackets which provide a profitable market for private enterprise housing. There is evidence that, in addition to their patriotic war bond purchases through volun-

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[87] Weaver, NEGRO LABOR: A NATIONAL PROBLEM, pp. 78-93, 112-130.

tary payroll deductions, their experience in the last depression have motivated increased savings among Negroes. The National Association of Real Estate Boards, the National Association of Home Builders, and others, now recognize that they have overlooked this growing market for decent housing among Negroes."[88]

The first administrator of the NHA, John B. Blandford, Jr., in the fall of 1944, spoke of "the barriers which exist even for the Negro citizen who can pay for a home, and, if permitted, could raise a family in decent surroundings," and specified "site selection, of obtaining more 'living space,'" and net income as the principal one.[89]

In 1945 a national survey of the housing market, which covered 41 cities and involved 9,200 interviews with Negroes living in congested and blighted areas, found that almost 40% of these persons were paying between $50 and $60 a month for rent. Of the entire group of persons interviewed, 43% were willing to buy new homes and 65% of them had savings of more than $1,000.[90]

A similar study was made in a sample slum area in Chicago and the results were as follows:[91]

	No. of Tenants	%	Average Rent	Rent Paid as % of Income
Pay More Than Can Afford	24	8.4	$30.00	25.7
Pay As Much As Can Afford	159	55.5	32.00	21.3
Willing To Pay More	104	36.1	27.00	15.4

[88] B. T. McGraw, WARTIME EMPLOYMENT, MIGRATION AND HOUSING OF NEGROES IN THE UNITED STATES, 1941-1944, *Racial Relations Service Documents,* Series A, #1, NHA, July 22, 1946.

[89] John B. Blandford, Jr., The Need for Low Cost Housing, A speech before the Annual Conference of the National Urban League, Columbus, Ohio, Oct. 1, 1944, p. 1.

[90] Detroit Free Press, March 20, 1945.

[91] THE SLUM . . . IS REHABILITATION POSSIBLE? *Chicago Housing Authority,* 1946, p. 17.

The Bureau of Labor Statistics of the U. S. Department of Labor has very recently made a survey of Negro Veterans of World War II, their incomes and their needs and desires with respect to the occupancy of dwelling units. The results of this survey in Detroit, for example, indicate very graphically the extent to which many Negroes could enter the housing market if they were not excluded therefrom artifically. If housing is available during the next twelve months, only at present price and quality, 21 out of every 100 Negro veterans would buy or build, and 15 would plan to move and rent. If they could find what they wanted, 49 out of every 100 would buy or build (as contrasted to 22 out of every 100 in the total population), and 14 would move and rent. Those who would buy or build, if they could find what they want, reported that the average or medium price which they could afford was $5,500 and ¼ of them could pay $6,000 or more.[92] Certainly, these statistics do not support the proposition that the inhabitants of the Black Belt of Detroit are, of necessity, required to remain in substandard housing for lack of economic means.

The following chart is drawn from the Bureau of Labor Statistics survey mentioned above. A similar survey with respect to the St. Louis area issued on May 19, 1947, and two surveys issued by the Bureau of the Census of the Department of Commerce relating to all World War II veterans have been made.

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[92] SURVEY OF NEGRO WORLD WAR II VETERANS AND VACANCY AND OCCUPANCY OF DWELLING UNITS AVAILABLE TO NEGROES IN THE DETROIT AREA, MICHIGAN, JANUARY, 1947, *U. S. Department of Labor,* May 20, 1947, p. 1.

	Detroit		St. Louis	
	All [a]	Negro [b]	All [c]	Negro [d]
Living in Rented Rooms, Trailers, or Tourist Cabins	17%	16%	8%	7%
Living in Ordinary Dwelling Units	83%	84%	92%	93%
Doubled Up	19%	22%	22%	31%
Not Doubled Up.....	64%	62%	70%	62%
Substandard *	6%	26%	19%	63%
Median Gross Rent.....	$43.00	$39.00	$32.00	$24.00
Plan to Move **	31%	63%	25%	35%
To Rent	9%	14%	13%	25%
To Build or Buy	22%	49%	12%	10%
Median Gross Rental They Could Pay	$46.00	$40.00	$39.00	$25.00
Median Price They Could Pay	$6,300	$5,500	$6,500	$3,800

* Substandard: Needing major repairs or unfit for use, or lacking private bath or toilet, or running water in the dwelling unit.

** Plan to move if housing is available at the price and quality veterans desire.

[a] *Ibid.*

[b] Survey of World War II Veterans and Dwelling Unit Vacancy and Occupancy in the Detroit Area, Michigan, *U. S. Department of Commerce,* October 31, 1946, p. 1.

[c] Survey of World War II Veterans and Dwelling Unit Vacancy and Occupancy in the St. Louis Area, Missouri, *U. S. Department of Commerce,* November 26, 1946, p. 1.

[d] Survey of Negro World War II Veterans and Vacancy and Occupancy of Dwelling Units Available to Negroes in St. Louis Area, Missouri and Illinois November-December, 1946, *U. S. Department of Labor,* May 19, 1947, p. 1.

At the end of the war, income distribution among colored American citizens in the northern urban centers more nearly approximated that obtaining for the entire population than ever before. The number and proportion of Negroes well above the subsistence level had increased greatly. The sampling of Negro veterans referred to above is ample demonstration of this tendency. Racial restrictive covenants, at least insofar as Negroes are concerned, cannot be justified on the grounds of inability to pay:

> "The peculiar intensity of the housing problems of Negroes is not due to their disporportionately low

incomes alone. The really distinctive factor underlying these problems stems from the fact that, among the basic consumer goods, only for housing are Negroes traditionally excluded from freely competing in the open market. Consequently, not only do the majority of Negroes live in low-rent substandard housing, but even when colored families can afford rents which normally assure decent shelter, they are often denied it.''[93]

There is no validity to the assumption that racial restrictive covenants can be justified in terms of the economics of residential real estate. Negro occupancy does not in itself destroy or depreciate the property. Large numbers of Negroes can afford to enter the free housing market. The only significant economic fact which the available data confirm is that traditionally Negroes have been forced to pay a larger portion of their income and a larger absolute price for smaller value and for substandard dwelling. Racial prejudice and the desire to profit by it are at the root of all restrictive covenants aimed at Negroes.

Thus Negroes are able to pay for better housing in large numbers, but the wall of racial covenants that surrounds their areas of concentration and excludes them from most newly constructed surburban housing prevent their securing it. This is no temporary phenomenon of a general housing shortage. It is an historic fact and will persist as long as racial covenants are enforced by the courts and given ''respectability'' by implied legality. Such a situation not only extracts gross social and economic costs from Negroes and the whole community, but it accentuates the frustrations of colored Americans that inevitably follow from the color-caste system.

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[93] Weaver, CHICAGO: A CITY OF COVENANTS, *Crisis*, March, 1946, p. 76.

VI

Judicial Enforcement of This Restrictive Covenant Violates the Treaty Entered Into Between the United States and Members of the United Nations Under Which the Agreement Here Sought to Be Enforced Is Void.

By Articles 55 and 56 of the United Nations Charter, each member nation of that body is pledged to take joint and separate action to promote:

> "Universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

While the Charter recognizes the sovereignty of the members, it states at the outset:

> "All members, in order to insure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations in accordance with the present Charter."[1]

This solemn international compact was described by the Michigan Supreme Court as merely, "indicative of a desirable social trend and an objective devoutly to be desired by all well-thinking people" (R. 67).

In addition to the decisions of this Court defining human rights to include the right of colored persons to own and use property,[2] the provisions of the United Nations Charter have been similarly construed by authorities.[3] For example,

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[1] United Nations Charter, Article 2, Paragraph 2.

[2] See Point II of this brief.

[3] See January, 1946 issue of 243 *Annals of the American Academy of Political and Social Science,* on "Essential Human Rights," particularly articles by Edward R. Stettinius, Jr., p. 1, Charles E. Merriam, p. 11.

the American Law Institute interprets the provisions of Article 55 to include the right of every person to adequate housing.[4]

The United Nations Charter is a treaty, duly executed by the President and ratified by the Senate (51 Stat. 1031). Under the Constitution such a treaty is the "supreme Law of the Land" and specifically, "the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."[5]

In the face of this provision, the Michigan Supreme Court stated that it is not a principle of law that a treaty between sovereign nations, "is applicable to the contractual rights between citizens when a determination of these rights is sought in State courts" (R. 67).

Historically, however, no doubt has been entertained as to the supremacy of treaties under the Constitution. Thus Madison, in the Virginia Convention, said that if a treaty does not supersede existing state laws, as far as they contravene its operation, the treaty would be ineffective.

> "To counteract it by the supremacy of the state laws would bring on the Union the just charge of national perfidy, and involve us in war."[6]

More recently, in holding that the public policy of New York against confiscation of private property could not prevent the United States from collecting a debt assigned to it by the Soviet Government in an exchange of diplomatic correspondence, this Court stated:

> "Plainly the external powers of the United States are to be exercised without regard to state laws or

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[4] American Law Institute, 243 *Annals of the American Academy of Political and Social Science.* See also in the *Annals,* C. Wilfred Jenks, "The Five Economic and Social Rights," pp. 43-45.

[5] Article VI, Section 2.

[6] 3 Elliots Debates 515.

policies. * * * In respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear. As to such purposes the state of New York does not exist. Within the field of its powers, whatever the United States rightfully undertakes, it necessarily has warrant to consummate. And when judicial authority is invoked in aid of such consummation, State Constitutions, state laws, and state policies are irrelevant to the inquiry and decision.''[7]

Early in the history of our foreign relations, treaty obligations of the federal government operated to affect the common law and statutory rights of American citizens to inherit property,[8] to rely upon a rule of admiralty law,[9] and to void the defense that a debt revived by treaty had been paid to the state which had expropriated it during the Revolution.[10]

The treatment of minority citizens within the border of a sovereign state is the proper subject of international negotiations and is a subject directly affecting international relations. The question arose, in view of the Nazi extermination policy, whether, "sovereignty goes so far that a government can destroy with impunity its own citizens and whether such acts of destruction are domestic affairs or matters of international concern.''[11] That question was resolved by the human rights provisions of the United Nations Charter, and by the subsequent adoption by the United Nations General Assembly of a resolution affirming

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[7] *U. S.* v. *Belmont,* 301 U. S. 324, 331.

[8] *Hauenstein* v. *Lynham,* 100 U. S. 483; *Geoffroy* v. *Riggs,* 133 U. S. 258. This doctrine has been strongly reiterated in *Clark* v. *Allen,* 67 Sup. Ct. 1431 (Advance Sheets).

[9] *The Schooner Peggy,* 5 U. S. 103.

[10] *Ware* v. *Hylton,* 3 Dall. 199.

[11] Raphael Lemkin, "Genocide as a Crime under International Law," Am. J. of Int. Law, Vol. 41, No. 1 (Jan., 1947), p. 145.

the principles that genocide is a crime under International Law whether committed by private individuals, public officials or statesmen.[12] This resolution changes fundamentally the responsibility of a sovereign nation toward its citizens.[13] While the Nuremberg trials were confined in scope to acts committed after the commencement of war or in preparation for it, the inclusion of persecution of German nationals in crimes against humanity indicates that the field of international affairs has been broadened to include domestic activity of a nation.

Official spokesmen for the American State Department have expressed concern over the effect racial discrimination in this country has upon our foreign relations and the then Secretary of State Stettinius pledged our government before the United Nations to fight for human rights at home and abroad.[14]

The interest of the United States in the domestic affairs of the nations with whom we have signed treaties of peace following World War II can be seen from the provisions in the peace treaties with Italy, Bulgaria, Hungary and Rumania, and particularly with settlement of the free territory of Trieste, in all of which we specifically provided for governmental responsibility for a non-discriminatory practice as to race, sex, language, religion, and ethnic origin.[15]

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[12] Resolution of General Assembly of United Nations, Dec. 11, 1946.

[13] Lemkin, *op. cit.*, p. 150.

[14] McDiarmid, "The Charter and the Promotion of Human Rights," 14 State Department Bulletin 210 (Feb. 10, 1946); and Stettinius' statement, 13 *State Department Bulletin*, 928 (May, 1945). See also letter of Acting Secretary of State Dean Acheson to the F. E. P. C. published at length in the Final Report of F. E. P. C., reading in part, "the existence of discrimination against minority groups in this country has an adverse effect upon our relations with other countries."

[15] See description of these provisions in, "Making the Peace Treaties, 1941-1947" (Department of State Publications 2774, European Series 24); 16 *State Department Bulletin* 1077, 1080-82.

The Potsdam Declaration provided for the abolition of all Nazi laws establishing racial or religious discrimination, "whether legal, administrative or otherwise."

This growth in international law has established that it is now proper for the executive arm of the United States Government to enter into treaties affecting the treatment of citizens of the United States within its own boundaries. There was never any question, however, that at all times the United States could by treaty protect and extend the rights of nationals of other states residing in this country, and as to covenants running against the foreign born of many nations, such power has always existed.

The Supreme Court of Michigan stated (R. 67) that treaties do not affect the contractual rights between citizens "when a determination of these rights is sought in state courts." Such a contention was reviewed and rejected by this Court in *Kennett* v. *Chambers*,[16] where this Court declared void a contract under which an American citizen sought to collect sums due him under an agreement by which he furnished funds to equip a Texan to fight Mexico during the life of treaties of friendship and comity between Mexico and this country. This Court held the contract void, saying:

> "These treaties, while they remained in effect, were the Supreme law and binding not only on the government but upon every citizen. No contract could lawfully be made in violation of their provisions. For, as the sovereignty resides in the people, every citizen is a portion of it, and is himself personally bound by the laws which the representatives of the sovereignty may pass or the treaties they may enter within the scope of their delegated authority * * * It is his own personal compact as a portion of the sovereignty in whose behalf it is made" (p. 50).

[16] 55 U. S. 38. See also: *Mayer* v. *White*, 65 U. S. 317.

In an early case, this Court held that an American citizen who had acted as master of a foreign vessel privateering against Spanish ships could not be, "recognized in our courts as a legal claimant of the fruits of his own wrong" in libel proceedings, because of treaty provisions between this country and Spain.[17]

This principle was applied to an attempted enforcement of a deed restriction against leasing to Chinese and a federal judge there said that the restriction was void because it contravened the terms of a treaty by which Chinese subjects were accorded all the rights, privileges and immunities accorded citizens of the most favored nation.[18]

Within the framework of our federal form of government, there may be fields in which enabling legislation is required to implement the solemn obligations of the human rights sections of the United Nations Charter. But the decisions of this Court leave no doubt that a contract by its own terms violative of the treaty obligations of the United States is void.

Even were it not established that the individual's right to enter into contracts in violation of treaties is restricted, certainly such contracts cannot be enforced by resort to the power of the state's judiciary since the states have divested themselves of all authority in connection with international relations and have agreed that for their mutual protection, this authority must be vested solely in the federal government.

Such a decision was reached by the Court of another member of the United Nations, the Ontario Supreme Court, when it held unenforceable a restriction against ownership

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[17] The Bello Corrunes, 19 U. S. 152.
[18] Gandolfo v. Hartman, 49 Fed. 181.

of land by, "Jews or persons of objectionable nationality."[19]

The attempt by the courts of the various states to aid private individuals in the prosecution of a course of action utterly destructive of the solemn treaty obligations of the United States must be struck down by this Court or America will stand before the world repudiating the human rights provisions of the United Nations Charter and saying of them that they are meaningless platitudes for which we reject responsibility.

Conclusion

This Court in 1917 declared unconstitutional efforts of the states to establish residential segregation by legislative enactments. Residential segregation by state court enforcement of racial restrictive covenants has spread over large areas and has excluded numerous groups. Continued enforcement of these covenants will firmly establish ghettos in this country.

Respondents' only basis for relief is the racial restrictive covenant which is ineffective without state action through its courts. The only basis for the decree of the courts of Michigan is the race of petitioners. If all other facts in the present record had been the same except that petitioners happened to be members "of the Caucasian race," the same courts of Michigan would have used all of the resources of the State of Michigan to protect them fully in their right to use and occupy their property.

The enforcement of racial restrictive covenants clearly violates the Fourteenth Amendment. The denial to petitioners of their rights guaranteed by the Fourteenth Amend-

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[19] *In Re Drummond Wren*, 4 D. L. R. 674 (1945).

ment is a part of a general pattern of enforcement of similar covenants blanketing large sections of our country. This case is not a matter of enforcing an isolated private agreement. It is a test as to whether we will have a united nation or a country divided into areas and ghettos solely on racial or religious lines. To strike down the walls of these state court imposed ghettos will simply allow a flexible way of life to develop in which each individual will be able to live, work and raise his family as a free American.

It is the protection by the Constitution of this basic human freedom which makes possible the functioning of a democratic economic and political system based on private property.

WHEREFORE, it is respectfully submitted that the judgment of the Supreme Court of Michigan should be reversed.

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Petitioners' Appendix A

Total Population, Non-White Population, Percentage of Non-White Population and Percentage of Total Dwelling Units Occupied by Non-Whites in Selected Northern and Border Metropolitan Districts, 1940 and 1947.

Metropolitan District	Total Population [a]		Non-White Population [a]		Per Cent. of Non-White in Total Population [a]		Per Cent. of Total Dwelling Units Occupied by Non-Whites [b]	
	1940	1947	1940	1947	1940	1947	1940	1947
New York-Northern New Jersey	11,014,511	11,669,409	675,969	1,015,002	6	8	6	8
Chicago	4,499,126	4,644,640	329,157	447,370	7	10	7	8
Los Angeles	2,904,596	3,916,875	127,477	240,375	4	6	4	4
Philadelphia	2,898,644	3,372,690	317,285	439,410	7	13	7	11
Detroit	2,295,867	2,702,398	171,877	348,245	7	13	7	11
Pittsburgh	1,994,060	2,100,092	115,423	131,052	6	6	6	6
St. Louis	1,367,977	1,584,044	150,088	239,470	11	15	11	15
Baltimore	1,046,692	1,306,040	188,106	284,383	18	22	16	18
Washington	907,816	1,205,220	215,398	285,988	24	24	19	20
Seattle	452,639	602,910	15,417	24,090	3	4	3	3
Portland, Ore.	406,406	534,422	6,696	11,268	2	2	1	2
Youngstown	372,428	380,897	23,008	29,915	6	8	6	8
Columbus	365,796	432,304	38,246	40,795	9	11	9	8
Akron	349,705	423,539	14,317	27,343	4	6	4	5
Toledo	341,663	383,418	15,245	20,196	4	5	4	4

[a] Source: *Current Population Reports, Population Characteristics,* U. S. Bureau of the Census, Series P. 21, 1947.

[b] Source: *Current Population Reports, Housing,* U. S. Bureau of the Census, Series P. 71, 1947.

The 1940 figures are based on 16 Census enumerations for April, 1940; the 1947 figures are U. S. Census estimates for April, 1947.